POLITICAL SCIENCE

HIGHER SECONDARY - SECOND YEAR

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CHAPTER 1

CONSTITUTION

MEANING OF CONSTITUTION

In every State there are rules and regulations for running the Government. The collection of these is called the Constitution of a State. It may be called the Basic Law of the State. C.F. Strong says that "a constitution may be said to be a collection of principles according to which the powers of the Government, the rights of the governed and the relations between the two are adjusted".

As there are different kinds of Governments in the States, there are different kinds of constitutions. It is the constitution which defines the form of Government to be established in a State. The constitution is the source of authority for all the political institutions in the State. In brief, a constitution is the fundamental law of a State.

A true constitution will clearly state the following facts :

(i) how the various organs of the Government—the Legislature, Executive, Judiciary—are to be organised ;

(ii) the various powers that are distributed among the organs of the Government and the manner in which such powers are to be exercised ;

(iii) fundamental rights to be enjoyed by the citizens ;

(iv) the method of amendment of the Constitution.

FEATURES OF CONSTITUTION

A study of modern constitutions reveals the following features :

(1) A constitution has to be definite and precise. As the Basic Law of a State, it may be contained in a document or

some documents. The constitution is approved and adopted in a Constituent Assembly or convention or ratified by the people in a referendum. A written constitution is more satisfactory than an unwritten one.

(2) A constitution must be comprehensive. It should cover the whole field of the organisation of Government. It should have no gaps or should not omit some fundamental rules about the organs of a Government.

(3) Stability and flexibility is another feature of a constitution. A constitution to be respected by the people must provide for a stable Government. A constitution to be progressive must grow and change to suit the new conditions. But, frequent changes take away the sanctity of the constitution. A good constitution will be neither too rigid nor too flexible as to encourage frequent changes in the basic principles and laws.

(4) Another feature is that every constitution contains, in addition to written rules, certain unwritten laws. As the constitution develops, certain conventions and usages are added to it, and they form a part of the constitution. The conventions and usages have the same effect as that of law.

TYPES OF CONSTITUTIONS

There are different types of constitutions. They differ from State to State. The modern constitutions are divided into the following types :

(1) Written, (2) Unwritten, (3) Rigid, (4) Flexible, (5) Unitary and (6) Federal.

Written Constitution

The traditional method of classifying the constitutions is into written and unwritten constitutions. A written constitution is one in which basic rules and regulations are written down in a document. The constitution of U.S.A. was drafted by a special convention of delegates presided over by George Washington at Philadelphia and was passed in 1787. The Indian Constitution was formulated and adopted by the Constituent Assembly and it came into force on 26th January, 1950. A written constitution is thus a deliberate creation.

Characteristics

A written constitution is definite and distinct in character. It is the supreme authority in the State. It means that nothing can be made or enacted which conflicts with the provisions of the constitution. The constitution can be amended only according to the procedure prescribed by the constitution.

Method of Amendment

All written constitutions provide a special method of amendment. The written constitution by the U.S.A. can be amended only by complicated method. A proposal of amendment must be passed by the Congress by 2/3 majority and then it must be ratified by 3/4 of the States in the Federation. The Indian Constitution provides for three kinds of methods of amendment. The Subjects like creation of new States, their names and boundaries, can be changed by simple majority in the Parliament. There are certain basic provisions in the constitution and these can be amended by 2/3 majority of the members in each house present and voting and by majority of total members of each House of the Parliament; such amendments must be ratified by half of the States in the Union. The rest of the provisions in the constitution can be amended by 2/3 majority of the members in each House present and voting and by majority of total members of each House of Parliament.

Merits

(1) A written constitution is recognised as a sacred document containing the fundamental rights and duties of the people.

(2) It is definite. As the constitution is contained in a document, it is convenient to refer to it.

(3) It cannot be easily amended. It is a guarantee against hasty legislation or changes.

(4) A written constitution has the merits of permanence and stability.

Defects

(1) A written constitution is conservative in outlook. It does not allow adequate growth according to the changing times.

(2) A written constitution may represent the national mind at a particular period. It cannot foresee the distant future. If the amendment is difficult, it may not keep pace with the times.

(3) Under a written constitution, the main concern of the Judiciary is to see whether the law conforms to the provisions of the constitution or not. As the Judges are generally conservative in their outlook, they may give judgments without taking into account the new spirit and conditions.

Unwritten Constitution

An unwritten constitution is one which is based on customs and usages. It is not written down in a single document. However, a custom or usage is as important as an enacted law. An unwritten constitution is the product of evolution; it is the product of history. It is the result of long experiments in which many elements like statutes, judicial decisions, precedents, usages and traditions have got accumulated from age to age. It shaped the political institutions according to the desires of the people and the needs of the times. The best and the only example of an unwritten constitution is that of England. The English constitution has not been made, but has grown and there is no single document. The major portions of the English constitution are in the form of conventions and usages.

Method of Amendment

An unwritten constitution, of which England is the only example, can be amended by a simple majority in the Parliament.

Merits

(1) An unwritten constitution has the merit of adaptability and elasticity. It can change according to changing times.

(2) It is alterable without any difficulty and, therefore, it can easily meet exigencies of times. General Elections in the United Kingdom were postponed year after year during the World War II without disturbing the administrative machinery of the country, and at the same time preserving continuity in the Government's policy.

(3) An unwritten constitution provides an excellent mirror of the passions of the people. It represents the historical continuity of the nation's life.

(4) It links the present with the past.

Defects

(1) As there is no single document in which the constitution is written, it is not definite and precise.

(2) It is unstable, with no guarantee of fundamental principles and Laws.

(3) The unwritten constitution may be changed very often to satisfy the whims of the political majority.

(4) The masses in a democracy can become suspicious of a constitution which has not been formally enacted, but which rests mainly upon conventions and usages.

(5) An unwritten constitution is not suited to a country where the people have insufficient political training.

The distinction between written and unwritten constitutions is not satisfactory, genuine and scientific. Professor Strong calls this distinction as false, misleading and illusory. The most satisfactory basis for the classification of constitutions has been given by Lord Bryce. He classified constitutions into two types: flexible and rigid. The one type is called flexible, because it is elastic, can be bent in various ways and thus can be easily amended. The other type is called rigid, because it is definite and fixed.

Rigid Constitution

A rigid constitution possesses a special and higher status. It can be altered by a method different from the one used for passing ordinary law. A rigid constitution can be altered by following a difficult and separate method, requiring a higher majority in the Legislature. Whereas ordinary law is passed by a simple majority in the Legislature.

Under a rigid constitution, the Constitutional Law contains the will of the sovereign people and consequently it should not

be alterable by the ordinary legislative process. The Legislature cannot alter the constitutional law in the same way as it passes the ordinary law. Thus, the powers of the Legislature are limited under a rigid constitution. If the Legislature passes a Law or an Act which is in conflict with the Constitutional Law, then it is unconstitutional and cease to operate. The Judiciary is given the power to interpret the constitution. The rigidity of a constitution is also related to the powers given to the Courts to determine the constitutionality or otherwise of the acts of the Legislature. The examples of rigid constitution are those of U.S.A., India, Australia and Switzerland.

Method of Amendment

Normally, all rigid constitutions are written constitutions. A rigid constitution provides a separate and difficult method of amendment. The more difficult and complicated the method of amendment, the more rigid is the constitution. In Australia, a proposal for amendment is passed by absolute majority in the House of Representatives and the Senate and then is ratified by the people in a referendum and by the majority of the States.

Merits

(1) The framers of a rigid constitution used their wisdom and experience while preparing it, so that it enjoys the confidence and commands respect of the future generations.

(2) A rigid constitution is considered a model of statesmanship.

(3) A rigid constitution safeguards legislative encroachments and is a guarantee against hasty changes.

(4) A rigid constitution guarantees to the people and particularly to the minorities their fundamental rights.

(5) It is free from the dangers of temporary popular passions.

(6) It has the merit of stability and permanence and is sure to get the confidence of the people.

(7) According to Gilchrist, "the chief merit of a rigid constitution is its definiteness".

Defects

(1) It is easy to exaggerate the value of rigid constitutions as guarantors of fundamental rights. These rights may not be effectively secured, if they are not accompanied by constitutional methods by which their enforcement can be guaranteed.

(2) The difficulty in amending the constitution very often proves harmful to national interest. It causes unnessary delay which may lead to revolution. According to Lord Macaulay, the most important cause of all revolutions is the fact that while nations move onward, constitutions stand still.

(3) A rigid constitution cannot easily adjust and adapt itself to the changing social, political and economic conditions of the country. It may become stationary unless new blood is injected into the constitution by necessary amedments.

(4) A rigid constitution having been made at a particular time cannot foresee the distant future.

(5) It is conservative. Under a rigid constitution, the main concern of the Judges is to see whether the Law is according to the constitution or not. But, Judges are generally conservative in their outlook and they will not take into account the new spirit and the changed conditions.

Flexible Constitution

The basis of this classification is the relation which the constitution bears to the ordinary law. If under a constitution the constitutional law or the basic law can be amended, repealed or altered in the same way as the ordinary law is passed, then that constitution is flexible. The flexible constitution treats both the constitutional law and the ordinary law on the same level, because the method of passing them is the same. It means that there is no difference between the constitution-making authority and the ordinary law-making authority. According to Gilchrist, in the modern world flexible constitutions have almost died out. The one notable example is the constitution of the United Kingdom.

Method of Amendment

A flexible constitution can be amended by a simple majority, as the ordinary law is passed in the Legislature.

Merits

(1) The merit of the flexible costitution is its elasticity and adaptability. It can be easily amended with the same ease and facility with which ordinary laws are altered.

(2) It is able to adjust to the changing needs of the society. A flexible constitution is particulary best adapted to the needs of a progressive State, as it ensures legal and orderly growth. It is the flexible character of the British constitution which has saved her so many times, from the dangers of revolution.

(3) It can claim to feel the pulse of the public opinion. It reflects the national mind.

(4) According to the constitution of U. S. A., Presidential Election must be conducted after every four years, whether there is peace or war. Actually, General Elections were held during the World War II, whereas in England, elections were postponed during the war period.

Defects

A flexible constitution has many defects.

(1) The process of amendment being simple, the flexible constitution can be very seriously affected by frequent changes.

(2) It is unstable and with no guarantee of permanence of fundamental principles and Laws.

(3) It is suited to a country where the people have insufficient political training. Also, it is unsuitable to modern democratic conditions.

Unitary Government

A unitary government is a single system of government for the exercise of all powers. The constitution confers all the powers of government in the first instance upon a single Central Government. According to Professor Strong, " a unitary state

is one in which we find the habitual exercise of supreme legislative authority by one central power". The Central Government may exercise all the powers by itself or create political sub-divisions or local units like districts, taluks and municipalities and delegate to them such powers as it deems necessary. The Governments of these local units are called local governments. The Central Government is competent to change their boundaries as well as their powers at its pleasure by ordidary law. In a unitary state, there are only local governments; there are no states or state governments. Thus, in a unitary state, the political sub-divisions are parts of a single Central Government. They are created, their powers defined and their form of organisation determined by the Central Government. These local units may be called the agents of the Central Government.

England, France, Japan, Italy, Ceylon and many other countries have unitary government. In all these countries, there is one system of government, that is, the Central Government enjoying supreme power. In England, the Parliament creates the local units and their powers are given to them by the Central Government at London. England allows maximum autonomy or self-government to her local bodies. On the other hand, in France, the local government are strictly subordinate to the Central Government at Paris and does not enjoy autonomy.

Merits

(1) In a unitary state, there is unity, uniformity of laws, policy and administration.

(2) A unitary government will make prompt decisions and take speedy action.

(3) A unitary government being simple in organisation, it is less expensive. There is no duplication of laws and of political institutions.

(4) In a unitary state, there are no state Governments. Hence, there can be no conflict of authority, no confusion regarding responsibility and no overlapping of jurisdiction.

Defects

(1) As all the powers are in the hands of the Central Government, it tends to repress local initiative and discourages interest in public affairs.

(2) It is not suitable to big countries, with huge population consisting of different races and cultures.

(3) The present day Central Governments have to tackle so many complex problems that they have no time to devote to local affairs.

(4) In countries like France, instead of decentralization there is concentration of powers at the Central Government.

Federal Governments

The term 'federation' is derived from the Latin word '*foedus*' meaning "treaty" or "agreement". Two or more hitherto independent States agree to form a new State called Federal State. A Federal State is an association of different States. One of the earliest definitions of federation is that of Montesquieu who says that Federal Government is "a convention by which several similar states agree to become members of a larger one". Professor Dicey defines federation as a "political contrivance intended to reconcile national unity with the maintenance of state rights". It reflects compromise between different states; it combines small states into a larger state. The small states preserve their autonomy, but they lose their sovereignty and become units of a federal state. A federal state is a double or dual system of government, in which there is a common or national or federal government and different state governments.

A Federal Government has four essential characteristics or elements :

(1) The supremacy of the constitution.

(2) The distribution of powers to the Central and State Governments.

(3) The constitution must be rigid.

(4) The presence of a Supreme Court.

1. *The Supremacy of the Constitution :* There must necessarily be a written constitution in every federal state. Professor Wheare says that if the Government is to be federal, its constitution must be supreme. The constitution provides for the distribution of powers to the Central and State Governments and prescribes the limits within which they must function. For both the federal and state governments, the constitution is the supreme authority.

2. *The Distribution of Powers :* Every federal constitution must provide for distribution of powers between the federal government and the state governments. The fundamental principle of distribution or division of powers is that all subjects that are of national importance are allocated to the Federal Government and those subjects which are of local importance and can best be administered locally are given to the State Governments. The most important subjects like defence, foreign affairs, issue of coins and currency, post and telegraphs, railways, import and export duties etc. are given to the federal government. The subjects of local importance like police, education, local government, jails, sanitation, parks, electricity etc. are allocated to the state governments. The powers of both the federal and state governments are enumerated in the constitution. What about those powers that are not given either to the federal or state governments? These left-out powers (residuary powers) are given to the state governments in the American Federation. In the Indian Constitution, the powers of the Union Government are mentioned in the Union List of Powers; the powers of the State Governments, in the State List; there is a third list, Concurrent List of Powers which mentions the powers that are common to both the federal and state governments. The residuary powers remain with the Union Government. Any alteration to this distribution of powers can be made by bringing an amendment to the constitution.

3. *A Rigid Constitution :* As the constitution is the supreme authority, it should not be altered either by the federal legislature or by state legislatures under their ordinary law-making procedure. It is essential that the power of

amending the constitution should not be given exclusively either to the Central Government or to the State Governments or their people in the amending process. Hence, federal constitution must provide for a difficult method of amendment. In the federal states like USA and Australia, every constitutional amendment requires the approval of the States. In Australia, in addition, every amendment must be approved by the people in referendums. An amendment relating to changes in the representation of the states in the Parliament or any alteration in the boundaries of the states must be approved by the majority of the people in the states concerned. Thus, the method of amending a federal constitution is more difficult and complex than amending a unitary constitution. Accordingly, a federal constitution is rigid.

4. *Presence of the Supreme Court :* In a federal state, conflicts may arise between the federal government and a state government or between two state governments. As the federal constitution is the supreme authority, doubts may arise about a particular subject. The power to settle the conflicts or to interpret the constitution cannot be given either to the federal government or state governments, because they are parties to a conflict. Such a power is given to an umpire independent of both. In a federation it is necessary for the Supreme Court to enjoy the authority to interpret the constitution. By interpreting the constitution, it keeps different governments within their limits, so that one government will not interfere in the affairs of another government. Thus, every federal constitution provides for an independent and impartial judiciary, with power to decide disputes between the governments and to uphold the supremacy of the constitution.

Merits

(1) In the modern world, there is keen competition among the states and the small states find it beneficial to form a federation which brings to them the advantages of a Union while maintaining their political autonomy at the same time.

(2) For vast countries like India, USA, USSR, Canada, consisting of different races, cultures, religions and languages Federation is the suitable solution. It reconciles and harmonises national unity with the rights of the states. In a Federation, there is a good combination of centralization and decentralization.

(3) According to A. C. Kapur, "a federal government prevents rise of a single despotism, checks the growth of bureaucratic authority and ensures the political liberty of the people".

(4) Gilchrist says that "the chief advantage of Federation is that Union gives strength; it also gives dignity". To be a member of a great nation like India is more dignified than to continue as a citizen of a small and independent Nagaland.

(5) Economically, also, there is a distinct advantage. If small states join together, one foreign representative and one defence department will be sufficient for all.

(6) Federal Government provides excellent schools for political education. Each citizen can devote his attention on local affairs; he has more freedom in shaping his own destiny. In the everyday matters of life, he is concerned mainly with his own state. The Central Government cannot interfere in the affairs of the state.

Defects

Gilchrist has mentioned three important defects arising out of the very nature of Federation :

(1) Weakness arising from a double system of governments.

(2) Weakness arising from the fear of secession.

(3) Weakness arising from the fear of combination of states.

1. *Double System of Government :* A federal government is financially expensive. As there are two governments, there is much duplication of administrative machinery and procedure. It is wasteful of time and energy, because negotiations among the governments have to be carried out to secure uniformity of

law and administration. There is needless duplication of services. The different laws passed by the Central Legislature as well as the State Legislatures will create confusion in the minds of the people.

(2) *Fear of Secession :* The fear of secession always exists in Federation. Secession is more easily achieved in a federal state than in a unitary state. The southern states of America were forced to remain in the federation by the civil war. However, in the USSR, the states are given right of secession.

(3) *Fear of Combination :* A number of states may combine against other component states or even against the federation. It happened in the USA when some of the southern states combined together and fought a civil war against the Federal Government.

(4) In a federal state it would be difficult to achieve proper adjustment between the Central and State Governments. There will be frequent controversies and conflicts between the Federal Government and the State Government or between two state governments. One may point out the long-drawn dispute among the southern states in India about the sharing of Cauvery River waters.

(5) The process of amending the federal constitution being difficult and complex, it is not possible to get the desired results as and when there is the need. All constitutional amendments in the USA require ratification by 3/4 of the States. There is no prescribed time limit for ratification unless specifically determined by a resolution of Congress.

(6) In a federation, there is the federal government and as many governments as there are states. It would be very difficult to get coordination and uniform policy for a common good under such a system of plural governments.

(7) The difference of interests may bring several states into conflict with each other or collectively into conflict with the Central Government.

THEORY OF SEPARATION OF POWERS

A government has three important functions, namely, the enactment, the adjudication and the enforcement of law. The

three branches of governmet to which these functions are given, are known as the Legislature, the Judiciary and the Executive respectively. This three-fold division of governmental functions has generally been accepted by all.

Political liberty is possible only when the government is limited. The Theory of Separation of Powers says that the functions of the government should be separated among the three branches, each branch should be limited to its own sphere of action without encroaching upon the others and that it should be independent within that sphere.

Montesquieu, the famous French scholar, explained this theory in his book "The Spirit of the Laws". He wrote that "when the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty ; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, and execute them tyrannically. Again there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There would be an end of everything, were the same man or the same body ... to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the cases of individuals ".

The essence of Montesquieu's theory of separation of powers is that it requires each power to act within the powers given to it. If the authority exercised is in excess of what the law gives to it, it should be checked by the other in order to prevent its encroachments.

The Theory of Separation of Powers has been explained by writers before Montesquieu's time. Aristotle had mentioned the three branches of government—the deliberative, magisterial and the judicial. Bodin, in his book "The Republic", explained the theory much in the same way as Montesquieu did later.

He urged especially, that judicial function should be given to independent judges. John Locke, the English writer, in his book 'Civil Government', distinguished between three powers that exist in every commonwealth : these are called legislative, executive and federative.

A similar view was expressed by Blackstone, the English jurist; in his book 'Commentaries on the Laws of England', he said, "whenever the right of making and enforcing the law is vested in the same man or one and the same body of men, there can be no public liberty."

Practical Effect of Montesquieu's Theory

His theory had great appeal and spread to other countries. According to Gilchrist, "among the many doctrines of liberty which have influenced men's mind, this more than any other has affected the actual working of government". The teachings of Montesquieu gave fillip to the French Revolution and nearly all governments of the revolutionary period were organized on the principles of the separation of powers.

In America : In the USA, this theory found its best expression. The theory of Montesquieu was adopted and put into practice by the fathers of the American Constitution. The different state constitutions followed the principle as far as possible. One of the most typical is the Constitution of Massachusetts which declares that in the government of Massachusetts, "the legislative department shall never exercise the executive and judicial powers, or either of them ; the executive shall never exercise the legislative and judicial powers or either of them to the end that there may be a government of laws and not of men." The American Constitution did not explicitly state that powers ought to be separate. It simply distributed the powers; the legislative powers are given to the Congress, the executive power to the President and the judicial power to the Supreme Court. However, to avoid the defects of strict separation of powers, the system of checks and balances is practised. According to this system, the President, the chief executive, is given certain powers over the other two

branches, as example, the power of judicial review. Dr. Finer says that the "American Constitution was consciously and elaborately made an essay in the separation of powers and is today the most important policy in the world which operates upon that principle".

Criticism of the Theory

(1) *Absolute Separation Impossible* : The state is an organic unity and just as the various parts of the body depend upon each other, so the various parts of the state machinery are inter-related. The government must always be viewed as a whole and its organs though distinct, must work in unison, in order to be useful and effective, in serving the purposes for which they have been created. By the nature of their functions, they cannot be divided into water-tight compartments. According to Gilchrist, this is the greatest defect of the theory of separation of powers.

(2) *No Isolation* : There cannot be any isolation and disharmony between the different branches of government. The Judiciary is primarily concerned with the judicial mode of action but a judge makes a new law when he gives an interpretation on a point not covered by law. This is a case in which the judicial and legislative function combine. Another example is where the executive and judicial functions combine : the executive head of state everywhere possesses the power to give pardon.

(3) *Historically False* : The British Constitution is the best example of the non-applicability of the theory. This is all the more peculiar, because Montesquieu took the British Constitution as a model for separation of powers. According to Montesquieu, separation of powers ensures liberty. Under the British Constitution, instead of the executive and legislative being separate, they are virtually one and yet the people enjoy maximum liberty.

(4) *Three Branches Not Coordinate* : The theory of separation of powers takes for granted that the three branches of government are equal. But, in practice, the legislature is

the major actor. By its control over the finances of the country, the legislature limits and controls the executive.

(5) According to Gilchrist, "in dictatorship, whatever may be the constitutional form under which they function, the executive power is supreme. The legislative and judicial organs of government are merely agencies for carrying out the will of the head of the government".

(6) *The Democratic Objection* : The complexity of modern industrial society and the concept of the welfare state have resulted in increased concentration of powers in the hands of the executive. There is ascendency of the executive over the legislative branch.

(7) In the modern industrial society, planning of the life and resources of the nation, requires coordination among the three branches of government. Co-operation and coordination between the different organs of the government and not absolute separation of function is required.

(8) *In France* : In Montesquieu's own country, France, from the Fourth Republic onwards, the theory of separation of powers has been deliberately abandoned. In the present constitution of Fifth Republic, there is fusion of powers as in the British type.

(9) *Administrative Law* : In the European countries like France, Switzerland, Germany, Italy, etc. the system of administrative law is a contradiction of the theory of separation of powers. Under this system, the government servants are tried in separate administrative Law Courts.

(10) *Combination of Functions* : There is combination of function in the working of government departments. According to Gilchrist, "it is impossible to cut off any one function or any combination of functions from the others".

In modern governments, there is increasing concentration of powers in the executive. There is danger to the rights of the people. To check this tendency, an independent Judiciary

is necessary. According to Gilchrist, "one point of separation which the theory demands has been adopted in the independence of the judiciary".

QUESTIONS

1. What are the meaning and main features of a constitution?
2. Write briefly on the "Unwritten Constitution".
3. Compare and contrast the rigid and flexible constitutions.
4. Describe the salient features of Federal Constitution.
5. Discuss the merits and defects of Montesquieu's "Theory of Separation of Powers".

CHAPTER 2

EXECUTIVE

MEANING OF EXECUTIVE

The second branch of government is called the Executive. The executive carries and enforces the will of the state, the laws and the judgments given by the judiciary. Broadly, the term "executive" includes all officials, high and low, and all departments concerned with the execution of laws. In India, for example, the President, Vice-President, the Prime Minister and his colleagues, the various government secretaries, the large army of government employees working under them, in other words, all persons connected with the enforcement of the laws, form the executive. In the narrow sense, the executive means only the chief executive; for example, the President and the Cabinet in the USA and in England, the Prime Minister and his colleagues. Sometimes, the highest officials are called the executive proper. The primary duty of this part of the executive is to see that the laws are properly enforced. Those who enforce the laws are called members of the permanent civil service or administrators. We are using the term executive here in the narrow sense.

IMPORTANCE

No state can exist without the executive. The breakdown of the executive will seriously affect the working of the government. In recent years, several factors have been responsible for giving large powers to the executive. The system of delegated legislation and administrative justice have vastly increased the powers of the executive. Often, the executive is referred to as government and an order from the executive is many a time regarded as government order. The executive has the responsibility of running the ship of the state. The general trend throughout the world at all the levels of government is the growing importance of the executive.

POWERS AND FUNCTIONS OF EXECUTIVE

(1) *Enforcing Law, Maintaining Peace and Order* : The executive has the responsibility of enforcing law. It is the duty of every executive to find ways and means to maintain order and peace.

(2) *Resisting Aggression, and Building Friendly Relations with Other Countries* : The executive has to resist foreign aggression. This is one of the basic functions of the state. Every state has to maintain contacts with foreign countries for the sake of promoting goodwill and friendly relations and for trade and commerce. A country's foreign policy is determined by the executive branch of the government.

(3) *Defence and War* : It is the essential function of the executive to prevent any danger to the territories of the state and to protect the country from external invasion, and when necessary to wage war. In England, the executive has the power to declare war and also to negotiate treaties with other countries. In the USA, war can be declared by Congress. The President of India is in supreme command of the Defence forces of the Union and has the power of declaring war and making peace.

(4) *Making Appointments* : The executive has wide powers of patronage in making appointments to higher posts in the government.

(5) *Financial Functions* : The executive has financial functions and it enjoys large powers relating to raising of money and spending them. According to democratic principles, the executive has to raise taxes and spend money with the consent of the legislature. The finance bill is introduced and piloted by the Finance Minister in Parliament. If the executive continues to enjoy the support of the majority, it can impose any taxes it likes.

(6) *Legislative Function* : The executive has certain legislative functions also. In a parliamentary system of government, the executive summons, postpones the Parliament. In countries like England and India, the executive takes initiative

in law-making by introducing and piloting the Bills in the Legislature. In all countries, the executive has the power to give approval or not, to all Bills passed by the Legislature. No Bill becomes law without the approval of the executive.

In countries like India, whenever the Parliamant is not in session, the executive has the power to issue ordinances or orders, which have the same force as laws.

With the rise of delegated legislation, the executive can make by-laws, rules and regulations within the broad framework of laws. The Legislature passes laws in broad outlines and the executive works out the details while carrying out the laws.

In certain countries, the executive enjoys vast emergency powers. In India, the executive (the President) has three kinds of emergency powers : (a) National emergency powers, (b) Emergency due to failure of state government, and (c) Financial emergency power.

(7) *Welfare State Functions* : All over the world , the executive takes the responsibility in drawing up plans to improve the social and economic conditions of the people. The executive in England, the USA and in the European countries have played notable role in the establishment of welfare state. In India, the executive has drawn up various plans towards achieving welfare state.

(8) *Judicial Functions* : The executive like the Indian President or the President of USA enjoys the judicial power to give pardon, reprieve and to proclaim general amnesty. Further, executive offices enjoy wide powers of adjudication.

PARLIAMENTARY EXECUTIVE

The parliamentary executive or government is also called Cabinet Government or responsible government. If both the parliament and the executive are unified and coordinated under the control of the same persons or if there is close relationship between them, such a system of government is called parliamentary or cabinet government. it is also called responsible

government, because the Cabinet is responsible to the Legislature.

NOMINAL AND REAL EXECUTIVE

In a parliamentary system of government, a clear distinction is made between the nominal and the real executive. The head of the state, the hereditary Queen of England or the President of India who is elected for five years, possess only nominal powers. He is just a titular head of the state. Legally he possesses all the powers, but in practice he exercises none of them; they are exercised by responsible ministers.

The real executive power is exercised by the Cabinet. The Cabinet Ministers are the real functionaries who run the government.

CABINET AND COUNCIL OF MINISTERS

In the parliamentary system of government, another distinction is made between the Cabinet and the Council of Ministers (or the Ministry). All the different kinds of ministers in a government Cabinet Minister, Minister of State, Deputy Minister form what is known as the Council of Ministers. Whereas, the Cabinet, a smaller body consists of about twenty ministers, who are the most influential and the most important of the Council of Ministers. These members of the cabinet are in charge of the major departments. The Cabinet Ministers meet once in a week under the chairmanship of the Prime Minister and decide collectively the policies of the government. They are collectively and individually responsible to the Legislature. The Council of Ministers, a bigger body consisting of about a hundred ministers, has no collective function and never meets as a whole body. It is the Cabinet that decides the policies of the government. It is the pivot around which the whole political machinery revolves.

The Prime Minister is the head of the government. He presides over the Cabinet Meetings. He forms the government, allocates the various departments among the ministers. He is also the Leader of the Parliament. He acts as the link between the head of the state and the Parliament. He is also the Leader of the Ruling Party in the country.

The parliamentary government is a party government. Whichever political party gets the support of the majority in the elections, is allowed to form and run the government. As the ministers belong to the ruling party, there must be unity in the Cabinet and a common front among the ministers. Collective responsibility is the most important characteristic of the Cabinet government, because the ministers either work as a team or go out as a team. They sail together or sink together.

In the parliamentary government, the Cabinet is described as the Committee of Parliament. The Cabinet brings together the executive and legislative branches. Bagehot defines Cabinet as a "hyphen that joins, the buckle that binds the executive and legislative departments together".

Merits

(1) The great merit of the Parliamentary government is that it ensures harmonious relations between the legislative and executive branches. They are members of the majority party legislature and also heads of the various departments in the government. The Ministers sit in the Parliament, introduce Bills and pilot them and guide the Parliament in law-making.

(2) According to Lord Bryce, "the ministers can feel the pulse of the Assembly and through it the pulse of the public opinion and can thereby obtain useful criticism in a friendly way, of their measures". The parliamentary government is the best example of representative democracy.

(3) The Cabinet system is flexible and elastic. Whenever there is national crisis, smooth change of government is possible without any revolution. It can adjust to abnormal condition, as was done in England in 1931, when the Ministers "agreed to differ" instead of collective responsibility.

(4) The Cabinet cannot function without well organized political parties. This makes the people politically conscious and vigilant. Vigilance is the true price of democracy.

(5) Cabinet government affords ample opportunity for the development of the political genius and initiative of the people of a country.

(6) Cabinet government has the merit of being a government by criticism. The majority party forms the government and the minority sits as the Opposition.

(7) Cabinet government has succeeded in democratizing governmental machinery in all civilized countries.

Defects

(1) Cabinet government violates the theory of separation of powers. There is fusion of executive and legislative branches in the same set of individuals. Combination of these two branches may lead to tyranny.

(2) The Cabinet government is unstable. Because England has two-party system, there is stable government. But, in countries having multi-party system, stable government is not possible. There will be frequent changes of government.

(3) Cabinet government is a government by amateurs. The ministers must be Members of the Parliament. Except for this, no other qualifications or experience is prescribed for the ministers. No technical or educational qualification is necessary for one to be a minister. The result is that the Cabinet government becomes a government by inefficient and inexperienced leaders, who are mere tools in the hands of the permanent Civil Servants.

(4) Cabinet government has decayed into a party government in which political power is exercised by the majority party. A Cabinet is guided more by party considerations than by sound principles of administration. Ministers are likely to use their position and powers to strengthen their party and weaken the Opposition.

(5) Another serious defect is the ever-growing size of the parliamentary government. The number of ministers in England is about 100 and in India about 60. If the government is too big, there will not be prompt and effective discussion and quick decisions.

(6) The Cabinet government divides the country into a set of men (ruling party) who work hard to carry out their policies and another set (Opposition) who try their best to obstruct the government. There will be opposition for the sake *of opposition.* According to Lord Bryce, "the system intensifies the spirit of party and keeps it always on the boil". The fight from inside the Legislature will be carried to the public and block the progress of the country.

(7) The Cabinet government is criticized for its lack of promptness in deciding and taking immediate action in times of national crisis.

PRESIDENTIAL GOVERNMENT

Presidential government is that system in which the executive is constitutionally independent of the Legislature and is not responsible to it. According to Bagehot, "the independence of the legislative and executive powers is the specific quality of Presidential government...". The Presidential executive is also called fixed executive. In the Presidential system, the head of the state is also the head of the government. The term 'Presidential' is used because in this system, the offices of head of the state and head of governments are combined in a President. Thus, under the Presidential government, the legislature and the executive are two distinct branches of government.

The President is the chief executive head of the state. He is the real executive. All the executive powers are placed in his hands. The President is assisted by a Cabinet consisting of secretaries; they are not called ministers; they are not members of the legislature; they are not responsible to it, nor do they take part in law-making. The Cabinet is subordinate to the President. The American system of government is the best example for the Presidential system.

The following are the main features of the Presidential system:

(1) In the Presidential system, there is only one executive, the real executive.

(2) The Presidential executive is elected by the people indirectly.

(3) The executive is separated from the Legislature.

(4) The President has a fixed tenure and is irremovable during that period. In the USA, the President is elected by the people for a fixed period of four years.

(5) The President and his secretaries are neither responsible to nor subordinate to the Legislature.

(6) In the Presidential system, the President and his secretaries are not members of the Legislature and not dependent upon it for remaining in office.

(7) In a Presidential system, the secretaries are appointed and dismissed by the President as he likes; he can accept or reject the advice given by them.

(8) The Legislature cannot be dissolved. In the USA, the President has no power to dissolve the Congress.

Merits

(1) The Chief merit of Presidential system of government is that, without being responsible to the Legislature, it retains a representative character.

(2) Another merit is that the Presidential government is a stable executive. The President is elected for a fixed period.

(3) The Presidential executive can take decisions with promptness, vigour and initiative. During times of emergency, it can take prompt action.

(4) This system of government makes possible the selection of capable men and appointment of experts as heads of the departments, without any consideration of party interests.

(5) As the term of the executive is fixed and not dependent upon the support of the majority in the Legislature, the

executive can plan well for its full term and can have a proper continuity of policy and stability.

(6) The Presidential government is best suited for countries inhabited by different communities with diverse interests.

Defects

(1) The Presidential system divides the government into water-tight compartments as it is based upon separation of powers. With the separation of the executive from the legislature, there will not be coordination and there will be undue delay in taking decisions. In the USA, for example, if the President belongs to one party and the Congress is dominated by the other party, it will result in conflict between them.

(2) In the USA, the President and his secretaries have no part to play in law-making.

(3) The Presidential government is characterised as autocratic, irresponsible and dangerous. The executive with vast powers may abuse the authority and become dictatorial.

(4) The Presidential executive finds it difficult to follow a vigorous foreign policy, as there is no harmonious relationship between the executive and the legislature. The executive may follow a policy which may not be acceptable to the legislature. In the USA, President Wilson's policy of making the USA member of the League of Nations was rejected by the Senate, the Upper House in the Congress.

(5) The executive in the Presidential system may find it difficult, if the legislature is unwilling or refuses to pass the required laws.

(6) The Presidential system suffers from the defect of rigidity. In the USA, elections must be conducted every four years even if there is war.

COLLEGIATE EXECUTIVE

Collegiate executive or plural executive consists of several members exercising executive powers as a body and the powers divided among them. In ancient Athens, the executive power

was divided among a number of officials each independent of the other. Sparta in early times had two kings. The Republican Rome had two Consuls. In France, at the time of the Revolution, the Directory was a plural executive. Several of the revolutionary executives of France were plural. In modern times, Switzerland and the U.S.S.R. have plural executives.

Collegiate Executive in Switzerland

The collegiate executive, consisting of seven Councillors, is known as Federal Council. The seven Councillors are elected for a fixed term of four years by the Federal Assembly at the joint session. The federal government has seven departments and each deparment is under the control of a Councillor. The Councillors are not members of the Federal Assembly, but at the same time are responsible to it; they need not resign if the Bills introduced by them are rejected by the Assembly. The Federal Council has a President and Vice-President elected from among the seven Councillors for a term of one year; these two offices rotate among the other Councillors. Thus, the Swiss executive is a combination of both the parilamentary and Presidential systems of governments. There is stability and responsibility in the Collegiate executive of Switzerland.

Collegiate Executive in U.S.S.R.

The Soviet Presidium is the Collegiate executive in U.S.S.R. It is a plural body consisting of 33 members, elected by the Supreme Soviet at a joint session, for a period of four years. The Soviet Presidium is peculiar to U.S.S.R. only and for which there is no example in Western countries. It enjoys executive, legislative and Judicial functions.

The collegiate executive takes the merits and avoids the defects of both the Parliamentary and Presidential executives.

Merits

(1) The Swiss executive has combined the merits of responsibility and stability as found in England and U.S.A.

(2) There is the fear of Cabinet dictatorship in England. The American President enjoying vast powers during a fixed

period is likely to abuse them. But, in Switzerland, the plural executive prevents tyranny and dictatorship.

(3) In Switzerland, the offices of President and Vice-President rotates every year among the Councillors and hence concentration of powers in a single individual is avoided.

(4) The Collegiate executive of Switzerland is representative of all opinions and areas in the country.

(5) The Swiss executive is not pledged to any party programme. It is a non-partisan body.

(6) The Swiss executive has the merit of continuity in policy and permits traditions to be formed.

Defects

(1) Collegiate executive unnecessarily wastes time and is not prompt during the times of emergency.

(2) The executive organized on plural principle is not compatible with unity and independence.

(3) The collegiate executive is weak, as it is divided.

(4) It is difficult to ensure secrecy, which is essential for the proper functioning of the executive.

The Collegiate executive in Switzerland is working successfully, because the Swiss people have particular characteristics, peculiar traditions and institutions not found in other countries.

QUESTIONS

(1) Illustrate the functions of executive.

(2) Write an essay on the features and merits of Parliamentary Executive.

(3) Prove in what way Presidential Executive is better for a country.

(4) What is Collegiate Executive ? Explain briefly.

CHAPTER 3

LEGISLATURE

The legislature, one of the branches of modern Governments, is the law-making body. The legislature or as the English call it, Parliament, come from the French word '*Parlement*' which means originally a meeting for discussion. Parliament reflects and expresses the will of the people; which, when formulated in proper language and "passed" becomes the law of the state. Parliament performs the double function of deliberation and law making.

IMPORTANCE OF LEGISLATURE

The legislature occupies a superior place. The primary and the most important function of the state is legislative. According to Gilchrist "the legislative is the most important—indeed the fundamental—function of government; without it the executive and judicial cannot exist".

FUNCTIONS OF LEGISLATURE

The will of the people is expressed through the legislature. The basic function of the legislature is to legislate. Legislature is the most important source of the laws. Old laws which have become out of date are repealed and new laws are passed in their place.

(1) *Deliberative function* : To make a law really the mirror of public opinion, it is necessary that it should be made after due discussion. For passing laws, certain rules and methods of procedure are followed in every legislature. A Bill is discussed three times before finally passed as an Act of the legislature; important bills are referred to legislative committees for expert study. After the committee stage, the bills come back to the legislature for further discussion. Thus, full and free discussion take place in law-making.

(2) *Financial Functions* : The most important function of the legislature is to exercise control over the national

finances. The government can spend money only with parliamentary approval. It introduces in the legislature the annual budget, the financial statement of revenue and expenditure of the government.

(3) *Function of Controlling Executive* : In parliamentary system of governments the cabinet is individually and collectively responsible to the legislature; and the control of the legislature over the cabinet is direct and immediate. The legislature exercises this control during the question time, at the time of discussion on the adjournment motion, annual budget and any resolution of no-confidence against the cabinet. According to Professor Laski, "the function of legislation is not the only function of Parliament. Its real function is to watch the process of administration to safeguard the liberties of private citizens".

(4) *Judicial Function* : The second chamber in most countries performs certain judicial functions. The second chamber in England, the House of Lords, is the highest court of appeal. The Senate in the U.S.A., sits as the court of impeachment for the trial of the President and Vice-President.

(5) The legislature has its constitution-amending function. The American constitution is amended by 2/3 majority of the congress and ratified by 3/4 of the States. In England, the constitution is amended by a simple majority in the Parliament.

(6) The elected members of both houses of Indian parliament, take part in the election of the President. This is known as electoral function.

(7) Legislatures also work as organs of enquiries. They often appoint commissions of enquiry.

UNICAMERALISM AND BICAMERALISM

In Latin, *camera* means house or chamber. When there is legislature having only one house, the system of organisation is called unicameralism, or unicameral legislature. When the legislature consists of two houses, it is called bicameral system or bicameralism. Of the two houses, one is called the lower

house or first chamber or popular house; the other is called the upper house or second chamber.

Unicamcralism

The legislature represents the will of the people. Since the people cannot at the same time have two different wills on the same subject; therefore the legislative bodies of some countries have only one house.

Historically the unicameral legislature came into existence in France in 1971 when the single chamber National Assembly was set up. In India only some of the States have two chambers. In Canada all the provincial legislatures (except Quebeck) consist of a single-chamber. In some of the states unicameral legislatures were set up as a result of revolutionery change.

Merits

(1) Responsibility in this system can be definitely located.

(2) Unicameral legislature avoids unnecessary duplication of deliberation and delay in legislation.

(3) Unicameral system results in economy of national expenditure.

(4) Prof. Laski and many other writers are of the opinion that a single chamber assembly should be the best to answer the needs of the modern state.

Defects

(1) The single chamber legislature is characterised by instability, violence, rashness, irresponsibility and passion and that its action will be implusive and unbalanced.

(2) Accordiog to Gilchrist, 'the unicameral system is usually the result of political inability; in its turn, it encourages hasty legislation, political strife and class struggle'.

(3) Unicameral system results in legislative despotism; it is likely to become tyrannical in its transactions.

(4) Single chamber government is considered the apotheosis of democratic rashness.

(5) Some writers characterise government by a single chamber as visionary.

(6) A single chamber may before the expiry of its term of office, grow out of tune and not keep in harmony with popular opinion.

Bicameral System

The English Parliament is considered the mother of Parliaments; its most important feature is that it has two houses : House of Commons (the lower house) and House of Lords (the upper house.)

Merits

(1) The legislature with a single chamber may become violent, rash and despotic; it has to be checked by a second chamber which acts as a brake on hasty legislation.

(2) The second conservative chamber prevents the hasty legislation.

(3) Interposition of delay and second thought is needed to crystallise public opinion on all bills before they become Acts. Sending a bill to the second chamber after having been passed by the first chamber, provides sufficient time for reflection and deliberation. Second chamber provides opportunities for calm consideration of bills.

(4) The bicameral system is a barometer of public opinion. There is a constant flow of fresh public opinion under this system.

(5) There is another merit, which is the result of modern development-the states in a federation are given representation in the second chamber. In the U. S. A. the 50 States are equally represented in the Senate, the second chamber,

(6) The second chamber is considered the house of elders. Higher age qualification is prescribed for being elected to the upper house. As such, able and experienced men are elected to upper house. They are able to act as a sober influence to the rash and passionate young members of the lower chamber.

(7) The popular chamber in every democratic country is now flooded with work. Consequently, there is so much of rush of work that one chamber cannot have sufficient time to devote and to fully deliberate upon all bills. Second chambers reduce the burden of the lower house in law-making.

(8) Bicameral system gives representation to different classes like minorities, to professional interests like teachers and graduates. The President of India nominates twelve members to the Rajya Sabha for their special knowledge or practical experience or service in such fields as literature, science, art and social service.

(9) The bicameral system protects individual freedom against the legislative despotism.

(10) Sir Henry Maine expressed the opinion that almost any kind of second chamber is better than none. The second chamber is not a "rival infallibility but an additional security".

Defects

(1) The bicameral system is complicated and accountability is divided.

(2) When both the chambers are elected by the people and possess coequal powers, discord and division will result.

(3) When one house is just like that of the other house, it has no utility. "If the two assemblies agree, the second chamber is unnecessary; if they disagree, it is abnoxious" (Sieyes).

(4) There is supplication of effort as both the chambers seek independently to obtain the same information by debating the same questions.

(5) A second chamber is a clumsy addition—a sort of fifth wheel on the coach, which prevents or delays the necessary and urgent transaction of business.

(6) In very many countries second chambers have proved as citadels of reaction, blocking the forces of progress.

(7) There is no unanimity of opinion regarding the organisation of the second chambers. This disagreement is itself an argument against bicameralism. The House of Lords, the upper house in England is condemned because it is not elected, it represents only the rich.

(8) In Canada the members of the Senate, the second chamber, are nominated; in India, the President nominates twelve members to the Rajya Sabha. This method of nomination of the members is seriously objected to as undemocratic.

Bicameralism is now the well established and essential feature of a representative democracy. Two houses are more advantageous. The upper house, being a house of review and reconsideration, acts as a brake; its function is to resist and not to persist.

QUESTIONS

1. Explain the functions of legislature.
2. What are the merits of Unicameralism?
3. Discuss the merits and defects of Bicameralism.

CHAPTER 4
JUDICIARY

IMPORTANCE OF JUDICIARY

The judiciary is the third branch of government. The administration of justice is the chief task of the judiciary. The judiciary is the guardian of the rights of man. Lonel Bryce has remarked that there is no better proof of the good government than the efficiency of the judicial system.

FUNCTIONS OF JUDICIARY

(1) Administration of justice is the chief function of the judiciary. The courts decide disputes between individuals and between them and the state. Before giving decisions the case is investigated, evidences examined and the fact is determined. Then the particular law is applied and judgement is given.

(2) The courts have the very important function of determining what is law and what is the scope and meaning of it. When there is an apparent conflict between different laws, the court decides which law is applicable. The judge is primarily an interpreter of law. When a law is made, it is not possible to foresee all cases that may arise under it. Also, frequently the judges have to decide cases in which no direct law is applicable. Such cases are decided on various principles such as equity or common sense and thus what is known as precedents are formed. These precedents are followed by other judges in similar cases. In this way, judges are law-makers as well as interpreters of law. A large volume of law is made of judge-made laws.

(3) In India and Canada the judges of the supreme court are required to give advisory opinion. The head of the state will refer important questions of law and fact, whether a proposed bill will be unconstitutional and obtain the opinion of the Supreme Court.

(4) It is the function of the courts to issue orders or writs for the purposes of preventing the violation of rights and laws.

(5) Another function is that it acts as guardian of federal constitution. There is distribution of powers between the federal government and the state governments. Neither the federal government nor the state governments can pass laws which are against the distribution of powers or against the provisions of the federal constitution. In countries like India, U. S. A. Canada and Australia, the Supreme Court is given the powers to declare such laws as ultra vires.

(6) Miscellaneous functions : In many cases, where the ownership, use or rights in property are in dispute, courts will take over the administration of such property, appoint guardians of minors and administrators of estates, pending the final settlement.

ESSENTIALS OF JUDICIARY

(1) There must be in every state one judicial system and one law and administered by judges appointed for that purpose. Justice must be strictly administered according to law.

(2) It is essential that the judiciary must be independent.

(3) The judges must be fair-minded, reasonable men whose financial position and personal comforts are not dependent upon their judgements. They must be free from any outside pressure or temptation, to better their financial circumstances by illicit means. The judges should be men of high legal knowledge and integrity.

INDEPENDENCE OF THE JUDICIARY

Independence of judiciary means that judges should exercise freely their discretion in the interpretation of laws and administration of justice and they should remain neutral in the discharge of their duties. Independence of judiciary is very essential for the working of modern governments. As between the individuals and the state, as between the majority and the minority, as between the powerful and the weak, financially, politically, socially, courts must hold an even hand and give judgements without fear or favour.

The following are the best means by which independence of judiciary can be secured :

(1) *Method of Appointment of Judges* : There are three methods of appointing judges—election by the legislature, election by the people and appointment by the executive. Election by legislature is practiced in Switzerland and USSR. However, election by legislature is against the principle of separation of powers; it will make the judiciary subordinate to the legislature; the political parties in the legislature will exercise their influence in electing their own party candidates as judges. Party interests and intrigue will play dominant part and not merit. Under these circumstances, independence of judiciary cannot be ensured.

The system of people electing the judges is practiced in some cantons of Switzerland, in a few states of the U.S.A. and in USSR where the judges of the People's Court are elected by the people. Popular election means party election. Candidates have to satisfy the prevailing public opinion. The judges have to satisfy the electorate to get re-elected. Hence, the popularly elected judges will not be independent or free from fear or favour. According to Prof. Laski, "of all the methods of appointment, that of election by the people at large is without exception the worst".

According to Gilchrist "appointment by the executive is the most common and most satisfactory method for the choice of judges". It is in practice in nearly all the countries of the world. It is claimed that the executive is the most appropriate agency to judge the qualities necessary for a judicial office. But this method is not completely free from party considerations. Prof. Laski, accordingly, does not consider simple nomination of judges by the executive as an adequate system. However, this method represents the best guarantee that appointments will be made on the basis of merit of the candidates. In England and many other countries the judiciary is generally selected from among the practising senior lawyers.

(2) *Tenure of Appointment* : The judicial tenure is also important in securing the independence and impartiality of judges.

The most prevalent rule of tenure is during good behaviour with compulsory retirement at a definite age. In some of the Swiss cantons and some of the States of America, where judges are popularly elected, there are short terms of tenure subject to re-election. Short tenure is as bad as the method of popular appointment. Independence and freedom are best secured by long tenures and security in post. Judges appointed for short terms are likely to abuse their position. A long tenure is necessary to secure full and minute knowledge of law and judicial precedents.

(3) *Removal of Judges* : Good behaviour tenure involves the question of removal of judges from office. Removal must be a difficult process. If the tenure of a judge is to depend upon the pleasure of a particular person or agency, independence and impartiality cannot be ensured. It is therefore advisable that the process of removal of judge from his office should involve much consideration and long process. In the U.S.A. the judges of the Supreme Court are removed by impeachment. In India the judges of the Supreme Court and of the High Courts can be removed from office by an order of the President on the basis of an address passed by each House of Parliament by a majority of the total membership of that House and by 2/3 majority of the members present and voting. A difficult method of removal ensures security and impartiality of the office.

(4) *Salaries of Judges* : A fixed and adequate salary also contributes to the independence of the judiciary. If the judges are to be independent, they must be made free from temptation of money power.

(5) *Qualification of Judges* : It is essential that a judge must be reputed for his impartiality and independent views. All these qualifications can best be secured if judges are selected from the bar.

(6) *Separation of Judical Functions* : It is highly desirable that the judicial and executive function should be distinct and separate from one another. The same person should not be a

prosecutor as well as a judge. In many States of India, the judiciary has been separated from the executive.

JUDICIAL REVIEW

Judicial review is an important contribution of the U.S.A. to political science. The power of the judiciary to declare law as unconstitutional is called judicial review. In England, the judiciary has no power to sit in judgment on the law passed by Parliament. But in countries like U.S.A., Canada, India, Australia, if the legislature passes a law which is against the constitution, the judiciary can declare such law as ultra vires.

The Constitution of U. S. A. does not clearly provide for and give the Supreme Court with any such power of judicial review. Judicial review is inherent in the nature of the written constitution.

In India, the Supreme Court and the High Courts enjoy this power. The doctrine of judicial review has certain merits :

(1) Judges are competent to make judicial review by virtue of their knowledge and experience.

(2) It enables the federal judiciary to act as the guardian of the constitution.

(3) The Courts are independent and less biased than legislatures.

(4) It protects the fundamental rights of the people and in particular guarantees the rights of the minorities.

(5) It is necessary to preserve a free and limited government.

(6) It enables the judiciary to guard against legislative haste and rashness.

However, the doctrine has been severely criticised.

(1) It may violate the spirit of separation of powers.

(2) By giving the power of judicial review to the courts, the smooth functioning of the representative system of govern-

ment is affected as the courts infringe upon the Legislative and executive functions.

(3) Judicial review delays the operations and implementation of important and pressing social policies so necessary for the needs of a dynamic society.

(4) Almost all the problems coming before the judges involve issues of political, economic and social importance and legislation on them. Thus, it makes the judiciary a super-legislature.

(5) Issues brought before the courts are decided by a majority of one single judge (in the USA five to four majority). It shows how the judges are sharply divided amongst themselves and their judgment vitally affects the nation as a whole.

(6) Judges may overlook the challenges of the changing times and may refuse to move forward. They may become rigidly conservative.

(7) Judges may follow blindly only the letter of the law totally ignoring its spirit. They may develop wooden attitude.

Judicial review has been accepted as an important doctrine in the working of the judiciary.

QUESTIONS

(1) What are the importance and essentials of Judiciary ?

(2) How can the independence of judiciary be maintained?

(3) Write short notes on Judicial Review.

CHAPTER 5

ELECTORATE

This chapter on electorate deals with the meaning of electorate and its importance. It also gives an explanation of franchise and its kinds, while discussing the merits and demerits of the systems of franchise and the electoral system.

Franchise, elections and electorate are terms which have special meaning and significance in political systems which give importance to the civil and political liberties of the citizens. In other words, they are relevant in modern times where the democratic system has come to be accepted as the only one which respects the will of the people. Democratic system, no doubt, was in existence even in the past, particularly in Greece in ancient times and in some parts of ancient India. The democratic system in these places, according to historians and political scientists, was good and based on the consent of the governed. But it is not clear how and on what principles the consent of the people was obtained for the government. Each country followed a system that was best suited to it and there seemed to be no universal conception of election or electorate. This is applicable to the concept of franchise as well. It is not possible to go into those aspects in detail and hence these concepts are discussed in the modern context. However, theories of electorate, election systems and franchise happen to be evolved gradually. Some of these theories have actually been adopted by the modern States.

MEANING OF ELECTORATE

The word 'electorate' refers to the citizens of a state who are voters and who possess the right to elect representatives and be elected. Broadly speaking, it means that all those who are connected with franchise and elections constitute the electorate, and legally exercise governing powers.

THE POWERS OF THE ELECTORATE

The powers mentioned above may be exercised directly by the electorate as an organ of government, or indirectly, by the

control which it legally exerts over the ordinary organs of government. Indirectly, it may exert a certain control by the pressure of public opinion. If the electorate exercises only small powers and at irregular or infrequent intervals, real authority is in the hands of the ordinary government and the extent of the electorate is only an apparent test of democracy. Only when the electorate directly exercises large powers or where its control over the entire government is extensive and constant, is the electorate an important governmental factor.

Hence in a pure democracy, the electorate would coincide with the entire citizen body and would directly exercise all governmental authority. But no state finds it expedient to widen its electorate beyond a fractional part of its entire population, and in no modern State could even this narrowed electorate exercise all governing powers. The degree of democracy will depend, then, upon the limitations placed by a State upon its electorate, upon the direct part played by the electorate in government, and upon the relation existing between the electorate and the ordinary organs of government. Moreover since unanimous consent among a large number of persons is unlikely, and some form of majority must prevail, the question of dealing with the minority remains; and States find it expedient to devise means of protecting this body and of giving it a legal method of expressing its will. Accordingly, the limitations placed by States upon the sizes of their electorates, the authority exercised by the electorate indirectly by means of their control over the ordinary organs of government, the means by which the electorate exercises political authority directly without the intermediate use of other governmental organs, and the methods of representing and protecting the minority are some aspects discussed in this chapter under suitable sub-divisions.

It should be noted that political democracy does not necessarily imply economic or social democracy. Even where political rights and powers are widespread and fairly equally distributed, there may exist wide discrepancies in the distribution of wealth, preventing economic equality, and clearly marked class distinctions, or castes, preventing social equality. Where such conditions exist, political democracy finds difficulties in

successful operation, since superiority or power of any kind tends to be translated into political control. Hence a democratic state finds it desirable to some extent to make efforts toward securing a fair degree of economic and social equality.

THEORIES OF THE NATURE OF THE SUFFRAGE

The functions of the electorate are exercised by the process of voting. Concerning this political right various theories have been held. They are as follows :

1. The Tribal Theory

This theory appeared in the early tribal organization of the Greek, Roman and Germanic peoples, and reached its highest development in the Greek city state. It regarded suffrage as a necessary attribute of membership in the State. State and individual were identified. Neither had any interests that conflicted with the other, and voting on questions of public policy was a part of the life of the community in which every citizen shared. Citizenship might be narrow and exclusive, but within the citizen class each person was expected to share in the work of government. The suffrage was not viewed as a right or a privilege, but as a necessary and natural part of the life of every citizen. Membership in the State carried with it the obligation to take active part in its life. The modern practice of requiring citizenship as a qualification for voting represents a survival of this theory.

2. The Feudal Theory

In the latter part of the Middle Ages, when the system of representation was being developed, the right to vote was considered as a vested privilege, attached to those occupying a particular status in society, and usually associated with the ownership of land. Modern property qualifications for voting are a survival of this theory, as are the systems of plural voting, such as that which existed until recently in Great Britain, where persons who owned estates in various parts of the country had the right to vote in each of these places.

3. The Natural-Rights Theory

The theory of an original state of nature, in which all men were free and equal and possessed natural rights, and of the establishment of the state and of government by a voluntary contract, led to the doctrines of popular sovereignty. All political power came from the people. They alone could create law, and the government was their agent, receiving its delegated powers from the people who created it. In accordance with these principles the right to take part in government was a natural right, by means of which the general will of the people could be discovered and the government kept responsible to the consent of the governed. According to this theory, which reached its highest development in connection with the revolutions in England in the seventeenth century and the American and French revolutions in the eighteenth century, the right to vote was viewed as an abstract right which people possessed under the law of nature. It was also appealed to in the efforts to extend the suffrage to women and to other disfranchised classes, and to widen the direct governing powers of the electorate by such devices as the initiative and referendum. The fallacy in this theory results from confusing the ethical and the legal concept of law and rights. Only those possess the right to vote, in the legal sense, upon whom the State has conferred such right by law. The state may legally and, from the point of view of political expediency, quite properly restrict the suffrage by imposing such qualifications as it considers necessary.

4. The Legal Theory

According to the legal theory, which is held by the majority of political scientists, the electrorate is viewed as one of the organs of government, whose composition and powers are determined by the laws of the State. Voting thereby becomes a function of government, the exercise of a public trust. The question of who may vote and of what the voters may do is decided by each state from the point of view of political efficiency. Suffrage, therefore, is not a natural right, but a political right, conferred by law. This theory serves as the justification for various reform movements, such as propor-

tional representation, the short ballot, corrupt-practices acts and educational qualifications for voting, the purpose of which is to secure a competent and effective electorate as a part of the governmental organization.

5. The Ethical Theory

The exponents of the ethical theory argue the desirability of the right to vote, not as a natural right but as a means for the most complete devolopment of human personality and worth. By taking active part in government the citizen becomes more interested in public questions and more intelligent concerning public policy than otherwise would be. His capacity for self-government is thereby increased and his dignity and self-respect are enhanced by the opportunity for self-expression in political affairs. This theory has been used to justify the extension of the suffrage, as a means of political education, to classes not fully competent to exercise it wisely. The granting of suffrage to former slaves at the close of the American Civil War is an example of this policy.

It may be noted that the first, third and fifth of these theories tend to widen the suffrage and equalize political rights. The second and fourth theories restrict the suffrage on the basis of particular privilege or ability. If the suffrage is viewed as a right or a privilege, the citizen is theoretically free to exercise it or not as he sees fit. If it is viewed as a legal obligation or duty, it may be argued that voting should be compulsory in order that the real will of the electorate may be accurately represented. In practice, however, only a few States impose penalties for failure to vote. It is usually believed that better results are secured if the citizen is under moral obligation only to perform this political duty; and that compulsory voting tends to lower the character of the privilege, to create a feeling of resentment against the government, and to increase the danger of political corruption.

EXTENT OF THE ELECTORATE

The widening of the electorate is one of the most characteristic features of recent political development. States have always made a distinction between citizens and non-citizens, based

mainly in ancient times on common blood and worship, in the Middle Ages on personal allegiance to the ruler, and more recently on territorial sovereignty. Within this class of citizens, all of whom owe allegiance to the state and may claim its protection, a further division has been made into those who have not, and those who have, the right to share in expressing the state's will. This latter class has usually been limited to a comparatively small part of the total citizen body. In the city states of Greece and in the Roman Republic, a fair proportion of the population had, under certain restrictions, a share in governmental authority. However, Rome's expansion and the establishment of the Empire destroyed this early democratic progress. The modern electorate developed from the local moots and assemblies of the Teutonic peoples and from the system of representation which created Parliaments in several of the new national states that appeared towards the end of the medieval period. The commercial centres of Italy and Germany also revived some of the methods of early city states in using the elective method for selecting officials of government. In England, a national electorate came into existence in the thirteenth century in connection with the selection of delegates to advise the king and his council on matters of taxation. The right to vote was limited by property qualifications in the rural districts and was restricted to members of the monopolistic corporations in the boroughs. The religious disputes following the Reformation added religious qualifications for voting in many states. As late as the beginning of the nineteenth century only three percent of the population of England possessed the right to vote.

The doctrines of natural rights, equality of men, and popular sovereignty, which were prevalent in the philosophic theories of the eighteenth century, manifested themselves in a demand for universal manhood suffrage; and in the French Revolution these doctrines were put into practice. In the United States where English political methods had been established without the background of feudal institutions, a comparatively extensive suffrage was further widened as a result of these theories, by abolishing religious and property qualifications. Even in England the injustice resulting from

the restricted and unevenly distributed franchise led to the Reform Acts of the nineteenth century, by which the suffrage was extended to the farm labourers and the city workers. Other States, affected by the general democratic tendency of the last century, have established a more or less extended electorate; and agitation for wider and more equal suffrage still exists. At present, in the more liberal States, almost half the entire population are voters. Remaining limitations, some being survivals of earlier restrictions others being the result of political expediency, may be summarized as follows :

1. Age

All States agree that a certain maturity is a requisite to the political intelligence and judgement needed in voting. Hence a minimum age limit to the exercise of the suffrage is universal, the usual requirement being twenty to twenty-five years of age. This qualification alone removes from the electorate almost half the entire population.

2. Sex

Political authority in its origin was closely connected with military power, and in many early political societies the freemen in arms formed the electorate. This association of political power with military service excludes women from active participation. When modern States arose, women were legally and economically dependent; and while in some States, through descent, women might occupy the throne, the idea that women as a class should share with men in government did not exist. In fact, exccept for the philosophical theory of 'universal suffrage, held by a small minority of extreme radicals at the time of the French Revolution, it was not until the latter half of the nineteenth century that women's suffrage was seriously urged. Even to-day, in many countries it has made little progress. Before the First World War, women had secured the right to vote in some of the American States, in Australia, and in Finland, and had the right to vote in local elections in Great Britain, New Zealand, and Denmark. Organized movements for the enfranchisement of women were actively at work in

many countries. The important part played by women during the war gave an impetus to their demand for political rights and led to a general extension of women's suffrage. By constitutional amendment women were given equal political rights with men in the United States. In England women were given the right to vote in parliamentary elections. After the First World War the new constitutions of Russia, Germany, Poland, Austria, Czechoslovakia, Rumania, the Irish Free State, and Italy and France conferred upon women full or partial rights of suffrage. In many of these countries the enfranchisement of women was followed by their election to public office.

The opponents of women's suffrage argued that women were physically unable to perform all the duties and obligations of citizenship, especially military service, and that hence they had no right to demand its privileges. It was held that active participation in public affairs would unsex women and destroy their valuable qualities and services as mothers and home-makers. If a wife voted differently from her husband, it would tend to create dissension in the family; if she voted according to her husband's advice, her vote was merely a duplication of his. The authority of Scripture was used to show that women were intended by God for a position of obedience, rather than of authority. In Catholic States women's surffrage was opposed because of the fear that the opinions of women would be controlled by priests. Many argued that women would be guided by sentiment and emotion rather than by reason, and that they would take little interest in public affairs after the first novelty wore off. It was believed that women's best influence could be exerted indirectly and non-politically, and that public carers for women would destroy deference and chivalry towards the sex, would make them different creature, and would be bad for the State.

The arguments in favour of equal rights for women took various forms. It was pointed out that the proper criterion for determining the rights to vote was moral and intellectual, not physical, and that women should logically be given equal civil and political rights with men, With the entrance of women

into industry it was argued that they need the right to vote to protect themselves against class legislation and to secure proper regulations concerning hours, wages, and conditions of employment. Some believed thah the active participation of women in political affairs would have a purifying and elevating influence and insure better government. The doctrine of 'no taxation without representation' was also used by many women who were owners of property. Universal education and the growing economic independence of women did much to break down opposition to the movement for women's suffrage.

3. Citizenship

At the present time, when movement of population from one country to another is common, citizenship becomes an important and complicated problem. Most states require either original or naturalized citizenship as a qualification for suffrage. Citizenship at birth is decided by one or two principles or by a combination of both. In accordance with the principles of jus sanguinis, the nationality of a child follows that of his parents or one of them, regardless of the place of birth. In accordance with principle of jus soli, nationality is determined by the place of birth, regardless of the citizenship of the parents. The former principle is the older and was incorporated into Roman law. Tha latter principle appeared in connection with the feudal theory of territorial soverignty. Conflict resulting from these two theories of citizenship are usually decided by treaty agreements among states, or by the practice of states in declining to assert their claims as long as the citizen whose status is in dispute remains outside their territory, or by allowing persons of double nationality to choose the one they prefer. The principle of jus soli has an advantage in the fact that citizenship is easily proved, but in other respects it is illogical and unsatisfactory. The principle of jus sanguinis lacks the advantage of easy proof, but is in general more natural and reasonable and has been more widely adopted.

Moderen states differ widely in their attitude towards admitting aliens to citizenship by formal grant or naturalization. Citizenship conferred by this process is a gratituous concession on the part of the state, and may be granted on prescribed con-

ditions or may be withheld for any reason which the state considers expedient. In some cases the process is made easy, and resident aliens are encouraged to become citizens; in others the process is so difficult as to discourage the admission of new citizens. In the United States only white persons and persons of African decent are eligible to naturalization. Naturalized citizenship does not necessarily carry with it the right to vote. Citizenship and suffrage are by no means coextensive. Many citizens are excluded from the suffrage in all states; and states may, if they choose, confer the right to vote upon resident aliens.

4. Residence

Closely connected with citizenship is the requirement that in order to vote a person must establish a legal residence in a particular place for a certain period of time. In the United States, where population is especially mobile, a period of residence ranging from thirty days in some election districts to two years in some commonwealths is demanded; and a person may vote only in the district containing his residence. In Great Britain a person possessing certain property qualifications may vote in one district in addition to that in which he resides. Some form of registration to prevent fraud in voting is in practice in all states.

5. Property

Since modern suffrage orignated during the feudal period its exercise was for a long time limited to property holders. An early English statute required a freehold worth forty shillings a year as a requisite for voting, and for centuries the possession of all estate or the payment of taxes was necessary. According to the current theory, voting was the accompanying right if property, not of citizenship, since property-owner alone had a permanent share and interest in the community. Even in modern times it has been urged that the assembly which imposes taxes should be elected by those who pay something towards the taxes imposed. While this theory has largely disappeared, certain of its elements survive. A small poll tax remains as a qualification for voting in many states, and in some the

possession of property gives to its owners additional votes or special privileges in government. While paupers, dependent on the state, are usually excluded from the electorate, property qualifications in general are being abondoned. According to the theory in present-day Russia, possession of property becomes a district disqualification for participation in government.

6. Mental and Moral Qualifications

Religious qualifications for voting have practically disappeared, although the constitutions of several commonwealths in the United States provide that no person shall vote who does not believe in a God. Criminals in confinement and idiots and lunatics are usually excluded; and sometimes those who have been convicted of certain crimes, such as bribery in elections, are temporarily or permanently disqualified. Recently educational tests, involving ability to read and write, have been adopted in a number of states. This requisite is based on the sound principle of political expediency that voting should be intelligent. The difficulty lies in the lack of a practical method of determining intelligence on public questions. Ability to read and write does not necessarily imply intelligent knowledge of public questions or high standards of honesty and integrity. Persons of high attainments in certain fields of knowledge may be absolutely ignorant and indifferent concerning political matters. Sometimes illiterate persons may possess sound sense and judgment on governmental questions. Where propaganda is used through the press deliberately to misinform the voters, ability to read may even be an obstacle to the forming of sound opinion.

CONTROL OF ELECTORATE OVER GOVERNMENT

The control which the electorate exercises over the government varies in degree from state to state in modern times. It depends upon the method according which the government is chosen and officials are appointed. In states where the government is directly elected, the control of the electorate over the government is greater. When the electorate selects a body of representatives which, in turn, selects members of the government, as is the practice in modern times, this control is less.

However, it may be said that irrespective of the method adopted if the electorate is vigilant and conscious of its duties it may still exercise an effective control over the government through proper mobilization of public opinion. In the next place, the actual power of electorate also depends to some extent on the method by which voting is exercised. It is generally believed that secret voting enables the voter to exercise his choice freely and independently, without the bringing of pressure to bear upon him by the government in power or by those who are in a position to intimate him in any way. At the same time there are those who believe that voting, as a public responsibility. should be exercised publicly and that secret voting develops a feeling of irresponsibility.

Further, if there are facilities for voting without difficulties and if elections are held on holidays there is every possibility of the electorate exercising actual power over the government. It is in this context only in the modern times elections are held on public holidays or ultimately, on the days of election the government declares those days as public holidays. In addition to what has been mentioned above it may also be noted that if the distance from the residence to the voting place is considerably short, besides geographic and climatic conditions are favourable, there is the likeli-hood of a greater number of electors exercising their franchise and thereby influencing and controlling the government.

Related to the study of electorate, theories of franchise and qualifications regarding grant of franchise, there is yet another questions as to who should be given the franchise. There were questions in the past in almost all modern countries whether there should be universal franchise or adult franchise and whether women should be given the right to vote. These issues were decided by each state according to its philosophy of government and desirability or otherwise. The general opinion was in favour of granting suffrage to only adults who have attained a particular age irrespective of considerations of sex. It means that the opinion of Political Scientists, sociologists, statesmen and administrators was not in favour of extending the right to vote to all. Naturally, several restrictions were

considered fit and actually accepted and implemented for giving the franchise to the citizens. Therefore, there are references to adult and women suffrage.

ADULT SUFFRAGE

The modern states have given the right to vote to adults. This has particular reference to the age of the citizen. Generally it is the view that citizens who are mature and who have attained the age of 21 and above can be given the right to vote though in some countries, of late, the voting age has been reduced to 18. The arguments in favour of the adult suffrage may be summarised as follows :

In democracies the people are the real sovereigns. Every individual is equal to every other individual in accordance with the democratic principle and law. All are affected by the laws and policies of the state. Thus the citizens should be able to protect their interests. This they could achieve only when they possess the right to vote. Adult suffrage imparts political education to the people and their interest is created in the government. The government elected on the basis of adult franchise enjoys not only the confidence of the people but also i s prestige is high. These are the important views which weighed in favour of adult suffrage.

Allied to this is the debate centering around women and the grant of the voting right to them. Opinion on this varied sharply in the past. But now there is no divergence of view and in many of the states this right has been extended to women also. In this connection it may be pointed out here that the right to vote for women in the U.K., and Switzerland was not given until recently. But a systematic and a sustained propaganda, besides agitation were carried on by the people connected with the movements of liberation of women ultimately won the right to vote for women in these two countries. Other states followed suit.

The opposition for granting the right to vote for women was, in the first instance based on the belief that women are generally conservative and most of them are illiterate. If they are

given the franchise right there is every likelihood of this right being misused and the votes cast in favour of incompetent persons. Secondly, if the women cast their votes against the will of her husbands, there may arise tension between them and their husbands and which might sometiemes lead to clashes within the home and family. Thirdly, the women would lose their feminine qualities and virtues if they are given the right to vote. Finally, those who are not in favour of women franchise argue that women cannot perform public duties as men can, because they are physically weaker than men. They cannot serve in military and police. Therefore, they are not entitled to be treated as equals with men and granted this right.

However, the arguments against giving franchise to women do not hold good and it will appear to be against reason. In recent times, women have begun to play a dominant and leading role, both in domestic and public life. They now enrol themselves in the police and army and perform even the onerous duties with elegance and ease. The argument that women are conservatives and illiterates also is not based on authentic information. Most of them are educated as their counterparts and many of them are as progressive as men. At this point it may be useful to note the views of the protogonists of the women franchise. Sidgwick has observed as follows : "I see no adequate reason for refusing the franchise to any self-supporting adult, otherwise eligible, on the score of sex alone; and there is a danger of material injustice resulting from such refusal so long as the state leaves unmarried women and widows struggle for a livelihood in the general identical competition without any special privilege or protection".[1] According to him women also need the protection of their rights and interests. Another great writer, namely Lowell says that males alone should not make laws pertaining to the rights of woman. The entire people will be benefitted by giving the voting right to women. In countries where women have been given the voting right, they have done a marvellous job of getting the laws passed for the welfare of labourers, children, orphans and other weaker sections of society.

[1] **Sidgwick, Elements of Politics, p, 384**

J. S. Mill, the most powerful advocate of women suffrage said, "I consider it entirely irrelevant to political rights, as difference in the colour of hair.........If there be any difference, women require it more than men, since, being physically weaker, they are more dependent on law and society for protection". Dr. Garner writes, "If women are capable of managing their own business affairs of entering into contractual relations of competing with men in thier professions and occupations, of teaching in the schools, and colleges, they are capable of sharing with men the experience of political rights and privileges".[1]

In conclusion, it may be said that the idea of granting the voting right on attainment of a particular age has been proved correct. Similarly, the right to vote for women has been hailed as it places the women also on par with men.

ELECTIONS

Allied to electorate and suffrage another important aspect is election. Election is the bedrock of modern democratic system. By election it is meant that the right of the electorate to pick and choose its spokesmen in the various national, regional and local respresentative bodies. These bodies may be the Parliament, or an Assembly of a constituent state of the nation or a council of a municipal corporation or a Panchayat. Election is held periodically depending on the rules and regulations governing it according to the exigencies of a particular period and requirements of the political system concerned. That is, sometimes it may take place according to calender or it may be held according to a special situation, particularly after the dissolution of the representative body. It must be said that election is the most attractive part of the representative system of an administration.

METHODS OF ELECTION

There are many methods of electing representatives. For this purpose every state is divided into constituencies. Each constituency may consist roughly of a certain number of voters.

[1] Dr. Garner, Political Science and Government, pp. 5 & 7

There is no uniform maximum or minimum number of electors assigned to a constituency. It varies from state to state and place to place. For the purpose of election, the constituencies are classified generally into single-member consitiuency system and multimember constituency system. Besides, there are direct and indirect systems of election also. A brief discussion of these systems is given below.

Single-member Constituency

This means that the entire country is divided into as many constituencies as the number of representatives is to be elected. For example, if 294 members are to be elected for the Andhra Pradesh Legislative Assembly the Andhra Pradesh will be divided into 294 constituencies. From each constituency one member will be elected. The candidate who secures maximum number of votes, will be deemed to have been elected. Every citizen has to cast one vote, which means, he has the right to cast his vote for only one Assembly and from only one constituency.

Multi-member Constituency

In this system the entire country is divided into large constituencies. More than one respresentative is elected from each constituency. Every voter gets more than one vote. Ordinary member cannot dump all his votes in favour of one candiate. In order to win the election, the candidate has to secure a fixed number of votes, and there is no need for securing a majority vote. The number of representatives to be elected from one constituency, is decided on the basis of area or the population. This system is also called General Ticket System.

Advantages of Single-member Constituency

(1) The representative remains responsible to the people.

(2) Because of small constituency poor but able people can contest the election easily and the country is benefitted by ability.

(3) This system is very simple and is easily comprehensible.

(4) There is no likelihood of representation being given to smaller groups. It helps in the formation of a stable and lasting Cabinet.

(5) This system affords opportunity to the representative to maintain contact with the people, because generally the constituency is small.

Disadvantages of Single-member Constituency

(1) In this system sometimes minorities fail to get satisfactory representation.

(2) The government gets the opportunity to delimit constituencies to its own advantage and it tries to limit the supporters of the opposition parties in a minimum number of constituencies.

(3) In this system sometimes candidates securing minimum number of votes win the elections because the votes of opposition parties are divided.

Advantages of Multi-member Constituency

(1) The ruling party cannot twist the constituencies in its own favour to meet its selfish ends.

(2) People representing the national interests are elected.

(3) The minorities get adequate representation in it.

Disadvantage of the Multi-member Constituency

(1) Owing to the vast area of the constituencies, a close contact between the representative and the voters cannot be maintained.

(2) This creates splinter groups in the parliament and the cabinet is not stable.

(3) No representative from a district or a tehsil is responsible to the voters in that area because many representatives from there sit in the legislature.

METHOD OF DIRECT ELECTION

Direct election means election of the representative by the voters themselves. Each voter goes to the polling station and casts his vote in favour of the candidate of his choice. For this purpose he is given a Ballot Paper and he puts it in the ballot box after marking his choice on it. The candidate securiug maximum number of votes is declared elected. In countries like India, Soviet Union, U. K. etc., elections are held in this way.

4. INDIRECT ELECTION

When the voters do not elect their representatives directly, but elect an Electoral College and when later on that electoral college elects the representatives, the system is called indirect election. Thus the final right of election is not in the hands of the voters in this system, but in the hands of the electoral college. In India this system is adopted for the election of the second chamber in the states and Centre.

Advantages of Direct Election

(1) The main advantage of direct election is that in this system, the people become conscious about their rights and duties.

(2) Voters become politically enlightened.

(3) The candidates place before the voters their policies and programmes. It imparts much political education to the people.

(4) This system is more democratic, because the voters get an opportunity to elect their representatives directly.

(5) The representatives keep contact with the voters. People can also keep a close watch on the work of their representatives.

Demerits of Direct Election

(1) Since the voters are not quite educated and enlightened they are easily swayed by the fiery speeches of the leaders, with the result that useless, selfish and shrewd candidates are elected.

(2) The public becomes the victim of false propaganda.

(3) This type of election is very expensive and arrangements are to be made at a very large scale.

(4) The people become over enthusiastic at the time of such elections and sometimes disturbances take place.

(5) Sensible people remain aloof from such election because the candidates bring charges and counter charges against one another.

Merits or Advantages of Indirect Election

(1) In this system the ultimate power of the election of the representatives is in the hands of the members of the electoral college who are more educated and enlightened.

(2) The evils of the rule of the crowd are eliminated in this system.

(3) No false propaganda is carried on during elections.

(4) The party feeling is more or less absent in this system.

(5) This system is useful for larger constituencies.

(6) Money is not wasted on propaganda as the number of the members of the electoral college is comparatively small.

(7) There is no fear of rowdyism and riots in this system.

(8) Intelligent persons like to contest such elections as they are to establish contact only with a small number of intelligent voters.

Disadvantages or Demerits of Indirect Election

(1) This system is not democratic because the voter does not-elect his representative directly.

(2) The voters have no direct contact with their representatives.

(3) The voters do not take much interest in politics and they do not receive any political education.

(4) The party feelings are also not totally absent in this system, because the members of the eletoral college are also elected on party lines and when Presidents etc. are elected through this system, they are to depend upon their support.

(5) There is no direct contact between the voters and the representatives.

(6) There are many intrigues among the members of the electoral college and sometimes there is possibility of bribery.

(7) If the voters are intelligent and educated there is no need for indirect elections.

Plural and Weighted Voting or Differential Voting

One Man, One Vote system is in vogue today, which means each person should have the right to one vote. However, in the nineteenth century John Stuart Mill criticised this system. Singwick also supported Mill's viewpoint. They are of the view that the people who are more educated, pay more taxes and are advanced in age, should be given more votes than those who are younger in age, who are illiterate and who do not pay any tax. Taine also said, that, "Votes should not be counted, they should be weighed".[1] These thinkers consider education, property and age as basis for the grant of more votes.

According to this view two systems are used :

1. Plural Voting

According to this system the same person is given the right of separate voting for paying taxes at one place, for having property at another place and for being educated at the third place.

2. Weighted Voting

According to this system more educated, more tax-payers and elderly people are continuously given the right of plural voting against those who are poor and younger. According to the amended Constitution, this system was introduced in

[1] Taine, quoted by Dr. Garner: *"Political Science and Government"*, p. 504

Belgium in 1833. But after the first world War (1914—18) the Communist Party staged a big demonstration against it. Consequently, in 1921 when the Constitution was again amended, the Weighted Voting system was completely abolished.

Merits of this system

In this system the merits of Universal Adult Suffrage have been included, but its drawbacks have been removed. It means that in this system everybody has been given one vote. Besides the provision for giving more votes to the learned, the aged and the property-owners, against the illiterate, the young and the non-tax paying people, has been made, so that the government is not run only by incapable and uneducated persons.

Demerits of this system

(1) This system is against democracy and the rich people have more infiuence in it.

(2) It is difficult to fix the standard for granting the plural voting right.

(3) It is not desirable to discriminate on the basis of property.

OPEN AND SECRET BALLOT

Open Ballot

Open ballot means casting of votes by raising hands. In this system, there is no secrecy. The contestants as well as the voters will know for whom the voters extend their support or whom the voters opposed. This system has its own defects. One of the defects is that the voter cannot cast his vote in favour of a suitable person because of influnce or pressure that is brought on him by contesting candidates or individuals connected with them. Therefore, the voter is denied the freedom of choice of the candidate according to his conscience. Another important defect of this system is that it creates a feeling of jealousy and ill-will which may sometimes lead to mutual clashes. Therefore, this system is considered to

be against the spirit of democracy and hence not practised in modern times.

Secret Ballot

In this system, the voters exercise their franchise in favour of the candidates of their chioce without the knowledge of both the candidates and fellow-citizens. Invariably, the voters are given the ballot papers on which the names and symbols of the candidates are printed. The voters can affix a specified mark against the name or names of candidates whom they favour and fold the ballot papers and put them into a box. This system provides the voters the freedom to exercise their franchise freely and without fear or danger of any influence or pressure brought on them. Thus the defects which are common in the open ballot system are avoided. The secret ballot system has been introduced in all progressive countries of the world. It may be significant to note that this system is adopted by India also.

MINORITY REPRESENTATION

The one question which generally baffles students of politics relates to methods of giving representation to national minorities. This question of minority representation is taken up by many with a view to prevent the tyranny of the majority. A number of methods are in use granting to minorities more or less share in the authority, that is, power. These methods are generally popular in federal and local government system, according to R. G. Gettell. According to him, these methods are favourable to minorities to adjust government to their own needs and enable to avoid the possible dissatisfaction that uniform legislation over the entire area of the State would create. In this connection many political reformers have favoured some form of proportional representation.

According to this plan of Gettell large electoral districts are used, each providing several representatives, and the system of voting is so arranged that the representatives will be allotted to the different parties in proportion to the number of votes cast by that party. Two main systems of proportional

representation are in use. English opinion favours the method of the single transferable vote known as the Hare System. According to this plan each voter has a single vote, but may indicate his preference among the candidates by stating his first choice, second choice, and so on. The quota, or number of votes required for election, is then ascertained by one of two methods : The number of votes cast is divided by the number of representatives to be elected, or, in order to make the result more accurate, by one more than the number of representatives. In counting the votes, a candidate who receives sufficient first-choice votes to fill his quota is declared clected. His surplus votes, if any, are passed on to candidates not yet elected, in the order expressed in the preferences. If any candidate is elected by the votes he receives as second choice, his surplus votes are given to the third choice, and so on until the full number of seats are filled. Obviously there is a considerable amount of chance in the order in which the ballots are counted, and various devices have been suggested to secure greater accuracy. But the European countries, it is said, favour the list system. Under this system the voter votes for the party list and also expresses his preference among the candidates upon the list. Each party secures representaion in proportion to the votes cast for its list, and the members apportioned to each party go to the candidates in order in which they appear on the list prepared by the party unless the voters express a different preference. Proportional representation is in use in the Irish Free State, in the Scandinavian countries, in Belgium the Netherland and Switzerland, and exists in many of the small new states of central Europe. It is also employed in municipal elections in some cities in Canada and the United States. Proportional voting represents more accurately the real wishes of the voters than the system of majority or plurality voting in single-member districts, but in countries where there are many political parties it often results in legislatures containing so many party groups that action is impeded and responsibility dissipated.

Merits of Proportional Representation

(1) In this system representation to every minority is ensured and thus the minority is satisfied.

(2) The system is based on justice, because all parties get due representation in it.

(3) The voters get the right to elect the candidates according to their preferences and they are supposed to be careful while showing their preferences. The result is that they elect good candidates.

(4) The voters get political education in this system, because they are given the choice to elect good candidates in an order.

(5) It helps to elevate the character of the legislature by securing the election of more enlightened and distinguished representatives.

(6) According to Lord Acton, "it is profoundly democratic, for it increases the influence of thousands who would otherwise have no choice in the government; and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own".

(7) The sphere of corruption and wastage of money is reduced because the influence of such parties is less, as try to keep the balance in their own hands. No one party commands much influence in the legislature.

(8) The voter is more free, because he can indicate his preference.

(9) No single party is in a position to secure absolute majority, but all the parties get some representation and thus no party can establish its dictatorship.

(10) Generally coalition governments are formed in this system. They take care of all in order to maintain a stablity.

Demerits of Proportional Representation

(1) This is a complex system, and there is a great difficulty in the counting of votes in single transferable vote system.

(2) Small parties get proportional representation, coalition governments are formed and the cabinets are unstable,

(3) There is no close contact between the representatives and the voters, because the constituencies are very large. The representatives therefore, do not feel responsible to their constituencies or areas.

(4) This system is impracticable for a big country.

(5) Since many groups get representation in this system, each group tries to enact laws favouring its own interests. Thus there is an adverse effect on the laws.

(6) It will give a setback to parliamentary government, because the government will become unstable owing to many small groups in the legislature and no party will be responsible to the people. In the words of Esmein, "To establish the system of proportional representation is to convert the remedy supplied by bicameral system into a veritable poison; it is to render cabinets unstable, destroy their homogeneity and make parliamentary government unstable".

(7) There is no provision for bye-elections in this system. Bye-elections are the mirror of the public opinion. According to Dr. Finer, the bye-elections indicate the political trend, but this type of election is not possible in propotional representation system.

(8) From political point of view, the utility of this system is doubtful. Laski was of the view that the problems of the modern state could not be solved by a reform of electoral machinery. These problems could be tackled more by the elevation of the popular standard of intelligence and the reform of the economic system than by making men choose in proportion to the nearly graded volume of opinion.

LIMITED VOTE SYSTEM

The entire country is divided into big constituencies. At least three representatives are elected from each constituency. Each voter is given the right to cast less than three votes. If five representatives are to be elected, then the voters are to cast three votes and if seven representatives are to be elected, then the voter can cast five votes. In this system the voter cannot cast more than one vote in favour of one candidate. The result will be that the minorites will get some representation. For

example, from a three-member constituency, the majority will send two representatives and the minority will be able to send one representative.

There are many defects in this system. The main defect of this system is that the minorities do not get Proportional Representation. They get only a small representation. Secondly, when the number of parties is large, this system does not work properly. Sometimes minorities do not get any representation at all. Thirdly, this system cannot be introduced in single-member constituencies.

CUMULATIVE VOTE SYSTEM

In this system the constituencies are Plural or Multiple. The voter has to cast as many votes as the number of candidates to be elected. In this system the voter can cast all his votes in favour of one candidate and if he wishes, he can cast some of his votes in favour of one candidate and the rest in favour of other candidates. In this system, the minorities can cast all their votes in favour of one candidate only and thus get one candidate elected.

The advantage of this system is that the minorities get some representation. But the drawback of this system is that sometimes popular candidates secure more votes. Since the minorities cast all their votes in favour of one candidate, many votes go waste. Secondly, every party does not get proportional representation. Thirdly, the control and evils of the political parties increase to a great exent. The minorities have to organise themselves in order to get their candidates elected. The political leaders maintain a strict discipline in their parties and they appeal to the voters to divide or accumulate their votes carefully.

SEPARATE ELECTORATE SYSTEM

In this system the constituencies are delimited on the basis of religion. First of all Britishers introduced this system in India in 1909. The Muslims were given the right to elect their representatives separately in 1909. Similarly the Sikhs were given this right in 1919 and the Harijans in 1935. According

to this system seats were reserved for every community and the constituencies were made according to the seats. From the Muslim constituencies, only Muslim candidates could contest election and only Muslim voters could cast their votes. Undoubtedly, the minorities used to get some representation in this system but there are many defects in it. First of all, the national feelings are destroyed. People become narrowminded. Communal hatred prevails everywhere and various groups suspect and dislike one another. The evil of the system of separate electorate ultimately resulted in the partition of India in 1947 and wholesale massacre of the minorities took place.

JOINT ELECTORATE WITH RESERVATION OF SEATS.

In this system seats are reserved for Minorities in the legislature under the Constitution. Constituencies are not made on a communal basis. The Hindus have the right to cast their votes in favour of the Muslims and the Muslims have the right to vote for the Hindus. Only those candidates who have regard for the interests of all the communities, can win the election. It creates the feeling of unity and the spirit of nationalism becomes strong. The representatives have in mind the interest of the whole of the country and not of their own community only. In the Constitution of India, seats were reserved for Scheduled Castes and Scheduled Tribes for 20 years since its promulgation. This period has now been extended till 1980.

Bye-election

At the time of elections all seats are filled up but sometimes some legislators resign or die. So their seats fall vacant and to fill those seats bye-elections are held. The advantage of a bye-election after the general elections is that the voting trend of the people is known Thus some estimate for the coming elections can be made by political parties.

Essentials of a Good Electoral System

The following should be the essentials of an ideal electoral system :

(1) Adult Franchise

(2) Direct Election

(3) Secret Ballot

(4) Strict laws for immoral and undesirable activities at the time of election

(5) Free and fair election

(6) The abolition of Separate Electorate and Plural Voting and introduction of Joint Electorate

(7) Protection of the Minorities

(8) The basis for the political parties should be political or economic and not communal

(9) Close contact between the voters and the representatives

(10) The elections should neither be too early nor too late. A gap of 5 years between the two election is quite appropriate

(11) The members should place national interest above local interests

(12) Provision for bye-elections.

TERRITORIAL AND FUNCTIONAL REPRESENTATION

Today in most of the countries there is a system of territorial representation. It means that the people elect one representative for every constituency irrespective of their profession. But many people do not approve of this system. They are of the view that a representative or a Member of Parliament, elected on the territorial basis, cannot represent the entire population because the people are divided into various professions. Therefore they are of the view that only those persons can represent different professions who are elected by them. For example, according to this system the doctors, teachers, labourers, capitalists, lawyers and businessmen will elect their own separate representatives. At the time of the French Revolution, Mirabeau and Sieyes supported this theory. Besides Communists Guild Socialists and Pluralists-writers, G. D. H. Cole, Sydney, Webb, Grahm Wallas and Duguit also supported this view.

After World War I this system was adoped in Soviet Union, Italy and Germany in one form or another, but as it

proved unsatisfactory, it was given up. This system encourages class struggle. The representatives become narrow-minded and national and social unity is destroyed.

QUESTIONS

(1) What is meant by electorate ?

(2) Write an essay on the theories of nature of suffrage.

(3) Discuss the different factors that influence the extent of electorate.

(4) Write briefly the arguments for and against women suffrage.

(5) What are the advantages of single member constituency ?

(6) Compare the merits and defects of indirect election.

(7) Explain : What is minority representation ?

(8) Discuss the details of the proportional representation.

(9) What are the differences between cumulative and limited vote system ?

(10) What are the needs of a good electoral system ?

CHAPTER 6

POLITICAL PARTIES

THE MEANING OF PARTY—GENERAL

One of the developments of modern democratic Governments is the rise of Political Parties. So universal are they that it may fairly be said that parties are essential to Democracy. In its widest sense, party means a number of people joined by common opinions on a given subject. There are parties in a church, in an association, a municipality, a cultural club, an economic society or a university. As a rule parties recognise someone as leader, who usually is the ablest exponent of the particular views held by the party. Behind party is the idea that union is strength. Whereas individuals acting alone cannot secure victory for their opinions in councils, they can do so when united. Often it is advisable for individuals to sacrifice their own opinion in order to join a party leader or organisation. Disreali said that party is organised opinion. According to Duverger a party is a collection of communities, a Union of small groups dispersed throughout the country and linked by coordinating institutions.[1]

THE MEANING OF PARTY—POLITICAL

A political party is distinguished from party in general. There may be resemblances between a party and a political party in regard to the composition, aims and functions. But parties as mentioned in the previous paragraph such as in a church or in a club cannot have the characterestic features and peculiarities of political parties. Similarly even with regard to the objectives and methods there are differences between parties and political parties. For example, the aim ofthe political parties is to obtain power and rule whereas the objective of parties in the ordinary sense is promotion of co-operation between individual members who constitute as its members and attainment of certain ideals as the religious unity or academic excellence. Therefore, it seems necessary to distinguish political parties from parties in the ordinary sense.

[1] M. Durverger ; Political Paties, p. 17

A political party may be defined as a group of people more or less organised, holding similar views on political problems and acting together to capture government through constitutional means for the achievement of their principles and implementation of programmes which they think are essential and good for the people. Definitions of political parties by certain important political scientists are given below :

Leacock says, "By a political party we mean more or less organised group of citizens who act together as a political unit. They share or profess to share the same opinions on public questions and by exercising their voting power towards a common end, seek to obtain control of Government."[1]

According to Mac Iver, "A political party is an association organised in support of some principle or policy which by constitutional means it endeavours to make the determinant of government"[2].

According to Gilchrist, "A political party...is an organised group of citizens who profess to share the same political views and who, by acting as a political unit, try to control the government".[3]

From the definitions cited above it may be clear that certain basic elements are necessary for the formation of political parties. They are :

(1) Individuals who are desirous of forming a party should have identity of views on general principles ;

(2) The individuals must have the desire to form themselves into organised groups ;

(3) The members of a party shall strive to achieve their objectives as far as practicable through peaceful and constitutional methods; and

(4) The aim of people who form a political party should be to achieve political power and should try to promote their political interest without at the same time sacrificing national unity and progress.

[1] Leacock : Elements of Political Science, p 311

[2] Mac Iver : Modern State, p. 396

[3] Gilchrist . Principles of Political Science.

ORIGIN OF POLITICAL PARTIES

To-day, political parties are regarded as a component part of the democratic political system. In some States, they even enjoy constitutional recognition. Political parties did not enjoy this status from the beginning of their development. Though parties, called 'factions', had emerged during the eighteenth century, they were regarded as dangerous to public welfare. It was feared that contests between parties would result in disorder, violence, governmental imbalance, and even revolution. Examples are not wanting in history to substantiate this fear. The class struggles and functional quarrels in Athens and in republican Rome, the contests between the Guelph and Ghibelline which posed a threat to the peace in the Italian republics, the riots between the supporters of the House of Orange and the Republicans in the Netherlands, and the civil war between the supporters of the Stuart kings and Parliament in England provided the conclusive proof that factionalism was dangerous to public peace and political stability. Yet, nothing could prevent the emergence of political parties as soon as some degree democracy began showing signs of development.

It is to Great Britain that credit goes for providing the base for the origin of political parties in their modern form. It is the opinion of some that parties had their origin in England even as early as the reign of Queen Elizabeth I. In support of their argument they cite the puritans who, as a group, had definite views on religion and politics. But clear party divisions began to appear in England only during the Stuart period. The emergence of political parties was hastened in England by the rivalry between the King and Parliament. Those who opposed the arbitrary government were called the Roundheads and the supporters of the King were known as the Cavaliers. These were the two factions which were pitted against each other during the Civil War. After the Restoration of Charles II, there factions came to be known as the Whigs and the Tories. While the Tories upheld absolute monarchy, the Whigs were for limiting the authority of the monarch by Parliament. The Tories were conservative in their attitudes and the Whigs were for extending democracy and for promoting social welfare.

Though, for a time, parties degenerated into personal factions among the ruling classes, the way was prepared for the emergence of parties in the modern sense of the term. By the time of George III the Liberal and Conservative Parties had been formed. The Liberal party became the advocate of reform and progress, while the Conservatives were conservative in their attitudes. The creation of the Labour Party is the most important recent development in the history of political parties in England. With the increase in the popularity of the Labour Party, the importance of the Liberal party began to decline. To-day major party contests in England are mainly between the Labour and Conservative parties.

The growth of political parties in England has been closely related to the emergence of responsible government and the cabinet system. The essence of the Cabinet system of government is that government is controlled by a group of persons who are in substantial agreement upon political principles and policies that this group, to continue in its position should enjoy the support of a majority in the legislature. The best way to secure this is by selecting a group of ministers from the same party which holds a majority of seats in the legislature. The cabinet system, which arose out of the warfare of parties, is intimately connected with the party system. Hence, to-day in Britain, the political party works as a part of the governmental system.

In the American colonies party alignments and party names were similar to those in the mother country. The emergence of the political parties we see in the United States to-day took place only after the Colonies achieved their independence from Britain. The chief issue facing the colonists immediately after independence was the form of union the Colonies should adopt. Those who favoured a strong central government were called the Federalists, and their opponents were known as Anti-federalists. Among the former were the financiers, manufacturers, commercial men, traders, and public creditors, while the farmers from the inland region were the opponents. Though the Anti-Federalist party was destroyed after the ratification of the Constitution, even-today the general division mentioned above is to be seen in the form of the Republican and Democratic parties in the United States of America.

It was during the Presidency of George Washington that the opposing elements crystallized into the first parties. The Federalists who were led by Alexander Hamilton favoured a strong national government. Thomas Jefferson led the Republicans who emphasized the rights of the individual and opposed extensive governmental authority. Surprisingly, the Democratic party founded by Andrew Jackson had its origin in the Republican party of Jefferson. By 1816 the Federalist party ceased to be a factor in national politics. What followed was "an era of good feeling" which was really a period of bitters personal politics. But formation of new parties commenced by 1830. Economic interests came to be associated with the parties. Consequently, the pioneer population of the Western part of the United States and the labourers started identifying themselves with the Democratic party and the financial and industrial interests of the North and the aristocratic planters of the South extended support to the Republican party. This type of alignment is to be seen even to-day. Since the Civil War the Democratic party has remained firmly entrenched in the South while drawing much support from the labourers. At present no clear-cut issues separate the parties. Most of the questions are raised for compaign purposes. In addition to the two national parties, the United States has given birth to a number of small regional parties which have made an impact on national politics.

Continental Europe presents a complex and confusing picture as far as origin of parties is concerned. Many political parties in that part of the world arose during the various revolutions. They neither represent consistent lines of development nor are they based on uniform political principles. In no European state do the political parties occupy a prominent place in government as they do in Great Britain and United States. There parties which are formed on the basis of nationality, religion, class spirit, foreign policy and economic interest. Additional political groups have been formed by personal followers of erstwhile royal families and present-day popular leaders. Shifting combinations are formed based on common grievances or by common hope of gains. European party history is one of constant changes. Apart from national or

religious lines, parties have also been formed on the basis of political principles like, conservatism and radicalism. Among the European parties the Socialists and Communist parties alone exhibit definite policies and branches of these parties are found in almost all the European States.

INDIA

The Indian situation did not present any ground for the development of party system from within. The development of party system proceeded from the application of external stimuli. The British provided it as part of an historical process. Prior to 1893 there was no semblance of representative government based on elective principle in India. Responsible government came on the scene only after the introduction of Dyarchy in 1921. The administrative apparatus of British rule helped the emergence of new types of elites in society. These elites intensified the demand for a government on elective principles. But this demand was not immediately conceded. It was from the interaction between the political constitution of the State and the social elements and under bureaucratic despotism that the germs of a party system arose in India.

The Indian National Congress came into being in the contest of these developments. "It was a result of interaction between pre-existing racial antagonism and Lord Ripon's attempt to create opportunity for an adequate expression of the expanding political intelligence and capacity of educated Indians."[1] The Indian National Congress which was founded on December 26, 1885, was, from the beginning, both a political movement and a party. As a movement its object was to mobilize all classes to bring pressure upon the Government for a gradual transfer of power to Indians. As a party it was interested in the way that power was to be exercised It grew from strength to strength and, at the time of Independence, it was the only dominant party in India. No wonder that power came to be vested in the hands of this party from the British. For over twenty years this party held sway over both national and State politics and this position it enjoyed till 1969 when it was split into two parties.

[1] Misra B.B. : The Indian Political Parties, p. 45

The emergence of the Communist Party of India may be taken as a direct consequence of the October Revolution in Russia. Though Communist groups were operating in different parts of the country between 1921 and 1925, it was only in 1925 that the party as such was formed. It took over twenty years for the Communist Party of India to mature and acquire the Status of a major national party. In 1964 a split in the party occurred and a new party, the Communist Party of India (Marxist) was formed.

The origin of Bharatiya Jan Sangh is linked with the origin of Hindu nationalism in the nineteenth century. In 1875 Swami Dayanand Saraswati founded the 'Arya Samaj' which created a new spirit among sections of Hindus in northern India and provided impetus to the movement of Hindu revivalism. The new ideas later formed the fundamental tenets of Hindu Mahasabha and Bharatiya Jana Sangh. In 1925 Dr. Keshav Hedgewar formed the RSS as a cultural organisation for regenerating the Hindu society. After the assassination of Gandhiji on January 30, 1948 the Hindu Mahasabha and the RSS brought into existence a nucleus of Bharatiya Jana Sangh. This was formed in 1951 out of a disciplined cadre of the RSS. From 1952 till 1971 the party made steady progress. In 1977 it merged with a few other parties to form the Janata Party.

The Socialist Party may be regarded as the descendant of the Congress Socialist Party formed in 1934. It was a group within the Congress Party. This group broke away from the Congress Party in 1948 and formed the Socialist Party. In 1952 this party, uniting with the KMPP founded by Acharya Kripalani emerged into the Praja Socialist Party. The party had a history of splits and mergers until, in 1977, it merged with other constituents to form the Janata Party.

The Swantantra Party was formed in 1959 as an alternative to the Congress. Eminent agriculturists, political leaders and thinkers were associated with this party from its inception. The founder leader of this party was the late Mr. C. Rajagopalachari. This party too merged with others to form the Janata Party in 1977.

Other than the political parties discussed in the preceding paragraphs, India has been the home of numerous other parties also. Some of them have been styling themselves as national parties, while a great majority of them operate at the regional governmental only. India has also produced political parties which have communal, and religious characteristics. As observed earlier, there has been no uniformity in the emergence of political parties in the different parts of the country. Of late, there has been a spirit in the mushrooming of parties in India. Different causes could be attributed to this phenomenon.

CLASSIFICATION OF PARTIES

A modest way by which political parties could be classified is by taking into account the number of parties in the political arena. It is on this basis that we speak of one-, two-, or multi-party systems. Important facts of political organization and control can be derived from such a classification.

A two-party-rule promises greater efficiency for the democratic process, as the British and American cases prove. Such a political setting cannot be easily transplanted into national communities which do not meet its preconditions. Social homogeneity, political continuity, an early sanction of responsible political parties striving for political control and their orientation at one elective office as the desired prize are the favourable circumstances for the development of the two-party system.

"Wherever fundamental cleavages in social structure evolve and continue to exist because of differences in nationalities, regions, religion, or class which are often fostered by outside influences; wherever political revolutions coincide with great social transformations, as in France, Central and Eastern Europe, and the Near and Far East; wherever a controlling elite, through the divide-and-rule device, prevents parties from fulfilling their genuinely political functions of preventing clear-cut policy alternatives; wherever the political machinery of a State diffuses the electorate's division by numerous choices

wherever any or all of these complicating factors enter the national political scene, a multi-party system finds its moorings".[1]

The different party systems have far-reaching consequences for the voting process and even more so for governmental decision-making. As far as elections are concerned, in a two-party system, both parties will compete for the shifting voter in the middle. As a consequence, politics will gravitate towards the centre. The two-party reflects a relatively stable order. The two-party system has been called "a convenient system for contented people". In this system the people are argued upon the general principles of the constitution and the policies of the government. Their disagreement over measures' is not very intense. Once effectively established at a political institution, the two-party system reinforces and often perpetuates the trend toward conformity.

A multi-party system does not possess this unifying and centralizing order. Its inability is to produce a majority party in elections. As a result, its factions concentrate on the centrifugal forces. This is not conducive for effective policy formation.

Policy-making in a two-party system is facilitated by its certain majorities. Yet even within the two-party system a hidden multi-party system may often be detected with intra-party splits and factions, or third parties. This may, at times, affect the crucial balance. What is exceptional in a two-party system becomes the rule under the procedures of a multi-party system. It is in the nature of multi-party system, that crucial decisions are tranferred from a much-divided electorate to the Parliament. This representative body, in turn, must content itself with a government by the formation of a coalition.

There are fundamental differences between the one-party rule and the two and multi-party organisations. The character of the totalitarian rule indicates that a one-party system is a contradiction in terms. Yet it is an important contemporary phenomenon. A State which boasts of the presence of only

1 Sigmun ' Neumann (ed): Modern Political Parties p. 402

one political party is definitely totalitarian in character whatever may be the form of its government. In such States, democracy is only a symbol of aggression.

FUNCTIONS OF PARTIES

A major determinant of the structure and function of political parties is the nature of the society within which they are operating. In one-party states a single political party is tolerated and it organises the political society through itself. In other forms of dictatorship all political parties are out lawed, and they form the core of the opposition. In democratic countries, by contrast, various political parties organize and co-ordinate the struggle for political power. In a democratic country the State is not simply the instrument of the party. Parties play a prime role in establishing the essential character of democratic countries. The vital characteristics of democracy accord a very special role to political parties. These are the existence of established rules and procedures regulating the government, the guarantee of existence and organization for minorities and an ordered process by which one group may hope to gain control over the government from another.

The first function of the party in a democratic country is normally the recruitment of personnel for government, particularly on the legislative and administrative side. It is a natural function of parties to try to recruit for all these positions. But the political systems in different countries are deliberately designed to prevent them fulfilling this. Recruitment of legislators is a universal function of political parties. It is virtually impossible for a citizen to aspire to this kind of service without party membership. Where the executive is drawn from the ranks of parliament, party membership is obviously a major qualification. Where the head of the executive is directly elected, he is likely to need party support to gain his position. Recruitment through party is not the ideal method of achieving the best management of society. A successful party politician may not be a good legislator or a good member of the executive.

Parties ensure that members of a government at different levels are bound together by certain common theories and policies. It is the job of the parties to work out ideas on the best uses of government and desirable policies to follow. In working out ideas on government, parties fulfil a further useful function in acting as the catalyst for political discussion. This takes place both between parties and inside them. This involves a large number of people at some level or other in helping to determine the direction of society. It is the parties which make it possible for a large number of people in many walks of life to play a part in politics.

Parties act as a link between public opinion and government. They help to ensure that the government keeps in touch with the desires of the public. The party has the task of trying to explain, or explain away, government policies to the public. This is a crucial role for party activities.

Through their political discourse, the parties have an educative effect on the public. In a democratic country, the distortion, which the parties might give to an issue is alleviated by their own competition. John Stuart Mill justified democracy by the suggestion that the involvement of all people in the governmental process at some level or another has an educative effect.

The central role of parties is the bringing about of sufficient consensus in society on political questions for stable government by consent. In the one-party State, this function is fulfilled by one monolithic if hetrogenous party. In the two-party system much interest aggregation takes place inside each major group. In the Multi-party system, a great deal of the aggregation takes place through the act of coalition. In either case parties concentrate on the desirable ends of government. The parties making up the government should ensure that decisions reflect the wishes and desires of at least a large part of society. When governmental decisions have been made, party machinery may help in making them acceptable to the public. In newer societies, parties are required to undertake a more positive role in creating consensus through interest aggregation. This is particularly true in nascent federations.

To sum up, political parties to-day have become an essential element of all political systems.

QUESTIONS

(1) What is a political party ? Explain.

(2) Trace the history of political parties in Europe.

(3) Write briefly about the two party system.

(4) What are the important functions of political parties?

CHAPTER 7

LOCAL SELF - GOVERNMENT

MEANING OF LOCAL SELF-GOVERNMENT

Local Self-Government, in its organization, functions and objectives, differ from the government. It refers to an agency or organization whose concern is the administration of the affairs, the introduction and implementation of schemes intended to promote the welfare of the people living both in the urban and rural areas. This kind of set-up is complementary to what a national or a state government does for the benefit of the people. In this connection it may be understood that government is an organization with such bodies as the executive, legislature, and judiciary. Its jurisdiction is concerning with its boundaries which includes the national resources and the whole population. Its activities are numerous and varied. They are in nature social, economic, cultural and political. Strictly speaking almost every aspect of the governance, the exploitation of wealth, and carrying out of programmes for the welfare of the people come under its responsibility. From this it will be clear that the term government refers to a body whose jurisdiction and responsibility extend to the entire area of a state and includes the whole population. But local self-government is an agency which is concerned with the well being of a population living in any part of the state. It deals with aspects and problems pertaining to the area which comes directly under its jurisdiction. Local self-government also implies that the administration of an area is the responsibility of the people living in any one particular area or place. The local administration, in theory, is said to be voluntary. The local self-government is created in accordance with the laws enacted by the government and functions with reference to the terms and conditions which have been stipulated in those laws of the state. Thus it should be clear that government and local self-government are not one and the same in their composition and functions and in their characteristic features. Government has a superior status while the local self-government is a subordinate agency.

NEED FOR LOCAL SELF-GOVERNMENT

The need for local self-government arises out of the growth in size of a modern state and the multiplication of its functions. When the area of a state is too large and the population is too great, it becomes difficult for the government of a state to ably administer the affairs of the state and at the same time look after and attend to the particular needs of a particular area or the people. Problems of a local nature in the vast area must necessarily differ and these cannot be solved by a uniform treatment. It becomes essential, therefore to decentralize power and hand it over to people in these local areas who can look after those affairs with greater interest, enthusiasm and active participation or involvement. They can handle problems like sanitation, water supply, provision of market facilities and primary education and wherever necessary and possible, to provide facilities for education and running of transport in their areas more efficiently than if these were to be administered by a central government in a unitary state or by the provincial or state government in a federation.

The reason for the existence and the benefits of local self-government are many. According to Gilchrist, in the first place a local self-government is necessary for efficiency. In an area where the people are most interested in certain acts of government, it is in the interests of the people to have these acts performed efficiently. For such efficient performance the people should be able to control those responsible for the work by being able to ensure or dismiss them.

Secondly, economy is secured by local self-government. If certain acts of government benefit only a definite area, obviously the expense of these acts should be borne by that locality. Sometimes it may be necessary for the governments to give grants on certain conditions; or the government may grant power to a local body to raise a loan for certain specific purposes; or it may have to set a limit to which the local body can tax the residents in its area. Taxation or rating, is the chief method of raising money in local areas. The people who pay rates elect local boards or councils and thus largely control expenditure as well as managements.

Thirdly, local self-government acts also as an agency to educate the people in modern representative system of government. In normal modern states the citizen is called upon only occasionally to take a personal part in the direction of national affairs, usually to record a vote at intervals of three to five years. This may lead either to apathy or discontent; but local government provides an actual representative system close at hand on the proper conduct of which the ordinary things of everyday life depend. The citizen thus becomes acquainted with public affairs. Local bodies provide an excellent school of training for the wider affairs of central government.

Fourthly, local self-government shares the burden of the work of the government, where there is no local self-government the governments would have to do everything through its officials. The local self-government also assists the government in the administration and collection of the taxes and revenues for the government in its area.

Lastly, the local bodies provide the necessary information and advice on proposed legislation. The advice of the local bodies thus become an important aspect in the formulation of policies of the government and enactment of laws by the legislatures.

The information funrished above and the discussion on the meaning and importance of local self-governments make it clear, how essential the local bodies are in modern democracies is made clear.

FUNCTIONS OF LOCAL SELF-GOVERNMENT—GENERAL

The functions of local self-government may be divided into two broad groups. They are obligatory and discretionary. The obligatory functions are the lighting of streets and public places, water supply, fire-control, registration of births and deaths, primary education, hospitals and dispensaries. In short the obligatory functions include all essential public utilities. The discretionary functions include such amenities as parks and public gardens, libraries and amusements, swimming pools, transport, the control of food-stuffs and such other measures which promote public safety, health and convenience.

FUNCTIONS OF LOCAL SELF-GOVERNMENT IN THE CHANGED CONTEXT

The objects of the local self-government in the context of changing conditions may be given as given below :—

(a) To work as local units of self government

(b) To provide local services and public conveniences for making an individual a good Citizen

(c) To ensure planned and regulated development of the Urban and Rural areas

(d) To mobilise local resources and utilise for public welfare

(e) To promote social, economic and cultural development in an integrated way.

In short, it may be observed that the local bodies, particulary in India are not only field agencies for the development and maintenance of Civil services and for execution in their respective areas of national programmes but they are also the primary units of democratic Government. They are the most appropriate organisations for undertaking local tasks of development and social welfare. Apart from providing civic amenities for the safety and convenience of its citizens, it is their rule to mobilise local support and public Co-operation for implementation of programmes of health, maternity, child welfare and family planning, education, housing, slum clearance and improvement and other schemes of social welfare.[1]

CONDITIONS FOR THE SUCCESS OF LOCAL SELF-GOVERNMENT

The success of local self-government depends upon the encouragement and guidance that it receives from the central government and the supervision that it exercises over local bodies. Such supervision should not mean undue interference in the administration of local self governing institutions. Such supervision should be wise and helpful. It should leave enough

[1] From Foreword by Shri S. N. Sinha to "The Municipal Administration in India" by Dr R. K. Bhardwaj.

scope for the local population to show its intelligence and initiative. No local institution will function successfully unless the people are willing to participate in its work and are anxious to put through new ideas and try new experiments. This is only possible when the local population is educated and has a high civic sense. They must be willing to perform their civic duties regularly. Further, with the increasing number of functions which the local authorities have now to undertake, they must have adequate sources of revenue to manage them properly. In the absence of adequate income, local problems will remain neglected and people will lose interest in local administration.

DEFECTS OF LOCAL SELF-GOVERNMENT

It must be noted that local self-government may tend to encourage a narrow outlook amongst the people. Persons may view every problem from a local angle and place their local interests above national necessity. The evils of the party system may also creep into local administration. Incompetent but influencial man may be selected to local bodies on party tickets and such people may use the machinery of local administration for the promotion of their selfish interests. Efficient government can only then become almost impossible.

These evils can only be overcome by an awareness on the part of every citizen of his own responsibilities. No group of inefficient persons can remain in power for long if every citizen in the locality realizes that their immediate welfare is in danger because of the administration of the local body by such persons. Citizens must have civic sense or civic consciousness and must put in joint efforts to remove such incompetent persons from office at the next election. It is only civic apathy on the part of citizens that can explain indifferent or bad administration by local authorities. Civic consciousness also implies that the citizen must pay their taxes to the authorities regularly and help to maintain healthy and clear conditions of living. Every citizen must understand that he is a part of society and that is only active co-operation on his part that can improve the life in his city or town or village. In

short, he must be activated with the spirit of social service. It is this spirit of give and take, of doing the best that one is capable of in his relation to society, that will improve civic life and strengthen the citizen's faith in local self-government.

THE ORIGIN OF LOCAL SELF-GOVERNMENT

The local self-government under the British government in India began in a modest way and the scope of its wish was limited. The purposes at that time were to foster trade and to remove certain problems and difficulties.

The first municipal law enacted in 1842 was known as "The Bengal People Act, 1842". It was applicable to the province of Bengal as a trial measure. The performance of the local bodies under this Act was not considered successful. It was replaced by the XXVI Act of 1850 as an all India measure. Since then several other acts were passed which led to the establishment of local bodies like the corporation of Calcutta, Bombay etc.

In order to make the local self-government broad based and improve its working Lord Mayo, Viceroy of India, issued an order in the form of a resolution of financial decentralization in 1870. The object of this resolution was to promote the working on education, public health, sanitation, medical relief and local works operations besides to afford opportunities for the development of self-government for strengthening municipal institutions. The second phase of the development of local self-government was reached in 1882, when Lord Ripon paid his personal attention to providing better opportunities of participation in the management of the public affairs.

The next stage in the growth of the local bodies was based on the recommendations of the Royal Commission on Decentralization in 1906. The Commission was of the opinion that the working of local bodies was a failure. It recommended among others the grant of more powers, genuine elections with majority of not only non-official elements but also the major strength of the elected representatives. Taking into conside-

ration the unsatisfactory financial condition it recommended that within the sanctioned limits, local bodies should be allowed to determine their own taxes within the legal frame work of the constitution. In 1918 the Government of India accepted most of the proposals of the Commission including electing majority in the local bodies with wider suffrage. From this time onwards and particularly from the Montague Chelmsford Report and the Government of India's Resolution of 1918 there was a steady growth of local bodies until 1947.

As soon as the country achieved independence in 1947 a new life was given and amending legislation was undertaken in all states of India in order to democratise the organisation, functions and working of the local bodies. During the post independence period emphasize was on developments in the field of rural government. This was in accordance with the views of Gandhiji whose interest was mainly on the improvement of villages. It is significant to note that Gandhiji attributed all the evils of modern civilisation to the twin processes of industrialisation and urbanisation. He thought that the only effective antidote to them was the revival of self-sufficient villages which flourished in ancient times. Most of the leaders of Free India who came to power at the Centre and in the States were his ardent disciples and they thought it was their duty to give effect to the ideas with which he inspired them. Much of the legislation on village Panchayats enacted after 1947 and on Panchayati Raj from 1958 was the outcome of the enormous influence that Gandhiji's philosophy exercised on those who were at the helm of affairs in the years following 1947. It is not possible to give a detailed account of the evolution of the local bodies here and the readers are advised to consult books given in the bibliography.

KINDS AND ORGANISATION OF LOCAL BODIES IN INDIA

Broadly the local bodies in India can be divided into two groups namely, Urban Self-Governing Bodies and Rural Self-Governing Bodies.

Urban Self-governing Bodies

Under this category there are Corporations, Municipalities and Cantonment Boards besides the Township Committees. The greater a local self-governing body is, the more are its functions and powers. The municipalities of larger cities are known as corporations. The status, structure and functions of these bodies are decided by the government. For this purpose suitable legislation is enacted from time to time.

Corporations

Generally big cities like Calcutta, Bombay, Delhi, Madras, Madurai, etc., have corporations. The state legislature is empowered to constitute a corporation by passing a special act for the purpose. A corporation is divided into a number of wards depending on the population and the extent of the area. For each ward a representative will be elected on the basis of universal adult suffrage. The common name of this representative is Councillor. The councillors so elected constitute the council of the Corporation concerned. Sometimes, a certain number of councillors also is nominated or coopted in order to give representation to women and scheduled castes. Generally the nominated councillors do not have voting rights, but they can take part in the deliberations of the council and express their opinion on matters pertaining to the corporation and civic needs of the people.

The elected councillors elect a Mayor and a Deputy Mayor from among themselves. The offices of the Mayor, Deputy Mayor and the councillor are honorary. The Mayor and in his absence the Deputy Mayor presides over the meetings of the council. The councillors are paid sitting fees and a specified amount as travelling allowance on days the council meets to transact business.

The administration of affairs of a city corporation is entrused to three authorities. They are, the council of the Corporation, Standing Committees of the Corporation and the Commissioner or the Executive Officer. Each of these bodies has functions expressly assigned to it by law. The other

officials, who is generally appointed by the government, are the Engineer, Electrical Engineer, Water Works Engineer, Revenue Officer, Health Officer and Educational Officer. In some places some of these officials are appointed by the Council on the recommendation of the government.

The standing Committees like the Appointment Committee, Taxation Committee, Education Committee, Finance Committee etc., are chosen by the council. The members of these committees are the members of the Council. Wherever necessary officials assist these committees in the discharge of their functions and responsibilities. These committees do the work of administration concerning their committees. They report their administrative decisions to the general meetings of the council, which is the governing body of the corporation subject to the powers conferred by the law constituting the Corporation. All executive powers are vested in the Commissioner who prescribes the duties of the establishment and exercises supervision and control over their acts and proceedings. The Corporation council frames the general policy for the administration of the city. Before the council decides upon or lays down a policy, there may be a discussion on it by the members of the council. The members who represent the people know better about what should be done and what should not be done besides when a particular thing or an action should be done, Generally discussions on a variety of matters take place at the initiative of the Mayor or the Commissioner. Sometimes individual members of the council also can bring in such matters which require the consideration of the council. The duties and function of a corporation are similar to those given elsewhere in this chapter. The finances of a city corporation are derived from rates on lighting, water, drainage, property tax, profession tax, octroi and grants from the State governments.

Municipalities

Next to the Corporation there are Municipalities. Municipalities are constituted by a general Act of State legislatures for cities and towns whose population is 20,000

and above. The duties and responsibilities of the Municipalities are as they are indicated by the legislation. The Municipalities depending on the total population, the area included in their jurisdiction, resources and income are classified into different classes as first class, second class, or third class. These Municipalities are established in big cities or towns other than where Corporations have been formed. Generally, there seems to be an uniformity as regards the organization, functions and responsibilities of the Municipalities throughout India. But with regard to minute details of the above, there may be variations from State to State and from Municipality to Municipality.

Organization of Municipalities and Functions of the Officials : As regards the organization, there are, in every municipality, officials appointed by the Government and non-officials who are representatives of the people of the Municipality concerned. The officials appointed by the Government are the Commissioner, Health Officers and Engineers, if any. The non-officials are the Chairman and members of the Municipal Council. The tenure of the officials appointed by the Government depends upon the duration for which the Government is inclined to keep them in their capacity as Commissioners, Health Officers, and so on. They are liable to be transferred from one municipality to the other. The Chairman and the members of the Municipal Council hold their office for a period of three years. Under special circumstances like the drought conditions, emergency etc., and, depending on exigencies of public services, the life of the Municipal Councils may be further extended, subject to the provisions of the Municipal Act at that time.

The Commissioner is the link between the Municipal Council and the Government. He is responsible for the day-to-day administration and the execution of the policies laid down by the Council and the implementation of the programmes recommended by the Council. He is also answerable to the Government for any lapses on his part in regard to the administration of the Municipality and the non-observance of the

orders or instructions of the Government. The Health Officer is responsible for the maintenance of proper sanitary conditions and public health. It is his duty to initiate appropriate actions in times of the outbreak of epidemics and see that such actions are carried out with efficiency and without loss of time. He has also powers and jurisdiction to inspect public utilities like hotels, restaurants and other business concerns with a view to enforcing proper sanitary conditions. All the other officials are responsible for carrying out such duties and functions which are of their concern.

The Chairman of the Municipality is elected from among the members of the Municipal Council. The tenure of the Chairman, generally, corresponds to the tenure of the Council. If, at any time, he loses the confidence of the Council, he may be removed from office before the expiry of his term by a successful no-confidence motion. The Chairman is the non-official head of the Municipality who maintains the representative character of his office. It is at his initiative that the Council formulates policies and decides upon the programmes that are to be initiated for the welfare of the Municipal population. He and, in his absence, the Deputy Chairman presides over the meetings of the Municipal Council.

In every Municipality there is a Council whose members are elected by the voters of the Municipality. For the purpose of the election of the members of the Council, each municipality is divided into as many wards as are necessary, keeping in view the total population. The number of Councillors in a Municipal Council should not be less than nine or more than fifty. The Municipal Council is a corporate body whose tenure is for three years. If necessary, the life of the Council may further be extended by an Act of the State legislature. But the Municipal councils may be dissolved at any time by an executive order of the State Government concerned, if, in its opinion, the Council has failed to perform its duties satisfactorily.

The Municipal Council has the power to acquire, hold and transfer property. It can sue and be sued in its corporate capacity. The Council has powers to prepare the Municipal

by-laws. It approves the Municipal budget and takes administrative decisions. The Council must meet at least once every month. As in the case of the members of a corporation, the members of the Municipal Council do not receive salary. But they, including the Chairman and Vice-Chairman, are eligible to draw travelling and monthly allowances. The councillors are eligible for re-election. The functions of the Municipal Councils are similar to those of the local bodies given elsewhere in this chapter.

Sources of Income : The Municipal Councils depend for their income on tax on holdings, water, lighting, drainage, carriages, carts and animals, besides profession tax, Octroi, and tax on goods brought into the area of the local body. The Councils also levy taxes on shops established within the Municipal area and licence fee for establishing industries and factories for manufacturing of fire-works, burning bricks, pottery, ice and for the establishment of hair dressing saloons and other fashion shops. Municipalities usually have meagre income from independent sources. Therefore, they are forced to depend, to a great extent, upon the grants-in-aid and loans given by the State Government. The State Government have power to examine the finances of the Municipalities.

Cantonment Boards

Cantonment Boards are constituted for dealing with the local problems of the cantonment area. Cantonment is the place in a city where troops are stationed. The members of the Cantonment Boards are elected. But the meetings of these Boards are presided over by a Chairman who is an official. The Defence Department of the Government of India exercises general control over all the Cantonment Boards in the country.

Township Committees

Township Committees are established for proper planning and development of places which are of tourist importance or of religious attraction. These committees generally consist of officials of the Government and non-officials nominated by the Government. The Chairman of the Township Committee is the

Collector of the District. These committees take up the task of planning the buildings, establishing rest houses, hospitals and locating and improving spots of attraction for tourists. These township committees stand between the Municipalities and rural local bodies.

SELF-GOVERNMENT IN RURAL AREAS

Panchayati Raj Bodies

The meaning, importance and need for local government have been discussed in the introduction of this chapter. But urban local bodies alone will not be in a position to achieve the desired result because about eighty per cent of the people in more than five lakhs of villages live in India. Thus the system of local government which does not provide for the participation of the rural people in the administration would be incomplete. Moreover, the temperament and the living conditions of the people in the villages differ from those who live in the urban areas. Therefore, it becomes necessary to take steps to bring the rural people under a system which would facilitate them to participate in and look after their own affairs themselves. This would, ultimately, in the opinion of great leaders like Mahatma Gandhi, lead to the revival of the ancient institution of the Panchayat and contribute to the economic prosperity of the people living in the villages. Further, it would also enable the villagers to get adequate training in the art of self-government. An important element of the participation of the rural people in rural self-government is that it will provide adequate encouragement for innovations and confidence in their capacity for doing good work. With this objective in view, the Government at the Centre and in the States, after Independence, thought it fit to introduce the Panchayati Raj system of administration in the rural areas in the whole of India. The Panchayati Raj system or Local Self-Government, has got its nucleus in the village.

Before the Panchayati Raj system was introduced, the leaders and the Government addressed themselves to the problems that are common and the difficulties of introducing the Panchayati Raj system and hence constituted several commis-

sions and committees such as the one headed by Bolwantray Mehta (1957) on the Santhanam Study Team on Panchayati Raj Finances (1963), or the Santhanam Committee on supervision and control over Panchayati Raj Institutions, or the Ashok Mehta Committee (1978) on the reorganization of Panchayati Raj Institutions. Based on the reports and recommendations of these committees and the exercises of the Planning Commission and other bodies relating to the Community Development and Rural Extension Schemes, a broad-based Panchayati Raj system was established. A definite step in this direction became a reality with enactment of Acts by several governments in the State in 1958 and afterwards. Still, it is the opinion of many that the Panchayati Raj Institutions have not been what they ought to be and they have not been able to lay the firm foundations of grassroots democracy in their country. However, there cannot be two opinions in regard to the desirability of the continuance of Panchayati Raj bodies and their role in the re-construction of the economy of the villages and the social well-being of the villages.

Organization of Panchayati Raj — General

As regards the organization of the Panchayati Raj, there seems to be no uniform pattern for the whole of India. But based on the system in most of the States and the recommendations of the Bolwantray Mehta Report, it can be said that there is a three-tier pattern, namely, the Zilla Parishad, the Panchayat Samiti, and the Village Panchayat, in India. "However, the levels at which the three-tier system is found, are different. For instance, Gujarat and Karnataka have Panchayat Samitis at the Taluk level, whereas most other States have it at the Block level. Similarly, almost all the States which have a three-tier system have introduced Zilla Parishads at the District level, except Tamil Nadu and Assam, where it is constituted at the Development District and Sub-Divisional level. Tamil Nadu has fifteen districts which, for purposes of development, have been organized into twenty-two Development Districts. Similaily, there is no uniformity in respect of nomenclature of the three units. The dominant pattern, however, is the three-tier system which has been accepted in most

of the States".[1] "The statistics relating to the distribution by Panchayati Raj Institutions in the country are fairly impressive. By the end of March 1973, there were 2,22,050 Village Panchayats covering 5.65 lakhs villages. In other words, 90 per cent of the total villages in the States and Union Territories were covered by Village Panchayats. About 41.64 crores of population has been covered by the Village Panchayats. This amounts to 97.4 per cent of the rural population. Equally impressive is the coverage by the Panchayat Samitis. In 1973 there were Panchayat Samitis in fifteen States of the Union; in all, there were 4,097 Panchayat Samitis in the country. The All-India coverage of Panchayat Samitis was about 53.3 Village Panchayats per Panchayat Samiti. The Zilla Parishad existed in eleven States, the total mumber of Zilla Parishad then, being 233. The All-India average per Zilla Parishad is 13.7 Panchayat Samitis. The figures reveal that about 54.3 per cent of Districts in the country have been covered by the Zilla Parishads".[2]

Organization of Panchayati Raj in Tamil Nadu

The Panchayati Raj system was introduced in Tamil Nadu in accordance with the provisions of the Tamil Nadu Panchayat Act, 1158. At the bottom of this system there is the village Panchayat. Above it are the Panchayat Unions and the District Development Council. With the introduction of the new system, the District Boards were abolished and the Panchayat Unions became their successor bodies. The area of the Panchayat Union is made co-terminus with that of the Development Block established under the Community Development Programme. At the village level, there is the Panchayat Council whose members are elected directly by the voters. The members so elected elect a President from among themselves. There is now a move to get the President elected directly by the people. As regards the Panchayat Union, there is a Council whose members are the Chairmen of the Panchayat Councils which come under the area of the Panchayat Union. The Chairman of the Panchayat Union is also elected from among the members who constitute the Panchayat Union Council.

[1] Introduction to 'Patterns of Panchayati Raj in India", ed. by Ram Reddy, pp. 6-8

[2] Ibid.

"The organization of the Panchayati Raj Institutions in Tamil Nadu can be described as follows :

(1) Panchayats :

(a) Village Panchayats

(b) Town Panchayats

(2) Panchayat Union

(3) District Development Council

(4) Panchayat Development Consultative Committees at State level.

At the District and State levels, the organizations are purely advisory in character and do not influence financial devolution. It is the Panchayat Union and the Panchayat which actually implements the development programmes. They are autonomous corporate bodies in their spheres".[1]

In Tamil Nadu, there are 12,630 Panchayats, 597 Town Panchayats, and 12 Townships constituted into 374 Panchayat Unions. The jurisdiction of the Panchayat Union is co-terminus with the area of the Panchayat Development Block. The average area per block is nearly 150 square miles and the average population roughly is 75,000. The Panchayat Development Block, in turn, is sub-divided into Panchayat villages. Each Panchayat has jurisdiction over the village or the villages which are included within its area. Town Panchayats are constituted where the population is not less than 5,000 and the normal annual Panchayat income is not less than Rs.10,000. The village Panchayats and Town Panchayats are the local units of the Federal Structural Organization of Panchayat administration while the Panchayat Union is the apex of this organization.

Function of Panchayati Raj Institutions

The Panchayati Raj Institutions are entrusted with the development and ndministration of agriculture and livestock, village forests and wastelands, social welfare, especially uplift

[1] Article on Tamil Nadu by Dr. S. Subramanian in ' Patterns of Panchayati Raj in India" ed. by G. Ram Reddy, pp. 264 265

of the Backward Classes, primary and secondary education, medical services and public health. building and communications, especially village district roads, minor irrigation, cottage industries and co-operatives. They are also in charge of maintenance of law and order and the execution of community development and allied programmes. The functions of the Panchayati Raj Institutions fall into three categories : (1) representative, that is, representing the opinions and the wishes of the people on matters affecting them; (2) regulatory or administrative, that is supervising village schools, mid-day meals scheme. looking after sanitation, etc., and (3) service or developmental such as the promotion of education, health, communications and irrigation. Thus, the Panchayati Raj bodies unlike their counterparts like the District Boards and Taluk Boards which were regulatory bodies, are also developmental bodies with new responsibilities.

The main object of Panchayati Raj with its three-tier system is to have a smooth two-way channel of information, ideas and feelings from the village household right upto the National Parliament and vice versa, as Members of Parliament and the Legislature have representation in the Panchayati Raj system. In recent times emphasis is on social moblisation, generation of community efforts and public enthusiasm for the successful implementatlon of the nation-building programmes.

Evalution of Panchayati Raj

The idea behind the Panchayati Raj is to enable the vast majority of the people living in our village to participate in nation-building activities. Given the necessary administrative and financial backing, the Community Development and Panchayati Raj agencies are able to muster the support and participation of the community.

It is now amply clear that the establishment of Panchayat Raj Institutions at different levels of administration has failed to achieve the laudable objectives. Panchayati Raj has miserably failed in its efforts at social mobilization and has not been successful in getting the co-operation from the people to the extent it is necessary for the effective implementation of the

nation-building programmes. There is also a great deal of conceptual confusion about Panchayati Raj. To some, it means the extension of democracy to the far-corners of the villages. To some others, it means the devolution of power to the local people so that they will be able to achieve rapid economic progress. Decentralization of political power must be accompanied with the decentralization of economic power. To the civil servants, the Panchayati Raj meant the tightening of their grip of control over the rural people. There is still a fourth group which feels satisfied with the new setup, irrespective of its success or pitfalls, because it approximates the dream of Gandhiji.

The illiteracy and the conservatism of the village people pose the greatest hurdles for the success of the institutions of Panchayati Raj. Even till today majority of the villagers are guided by one or two prominent persons in the village for whom they have unimpeachable loyalty. The elections to the local bodies are great prestige issues for the local people. Private and personal quarrels and other narrow feelings of casteism, communalism and groupism with their concomitant vices generate bitterness and animosity among the contesting candidates and their supporters. This jeopardises the peace and tranquility of the entire community. In spite of repeated resolutions by different political parties not to set up candidates in elections to the local bodies, they have given active support to this or that candidate and their resolutions have become mere pious platitudes. The concept of 'partyless democracy' at the grass-root level has remained only a lofty ideal. The institutions of Panchayat has become riddled with factionalism, casteism, communalism, and groupism, and nasty game of politics has been carried to the door-steps of the innocent villagers. There is no doubt that the Panchayati Raj has created warring factions in the villages and destroyed the unity of the rural community by introducing election and Party-politics.

If the Panchayati Raj bodies are to be transformed into effective units of Local Self-Government, they should be financially sound. Grants from the State Government for specified schemes initiated at the State level form the bulk of

the Panchayati Raj Budget. The Panchayati Raj Bodies have practically no choice in the utilisation of these resources. It is imperative that these bodies are encouraged by providing them with adequate state funds.

The strength of the Panchayati Raj Institutions depends to a large extent on their ability to mobilise local resources through taxation and other measures. At present, the only source or revenue to the Panchayats is the cess or surcharges on land revenue. The Panchayati Raj Institutions have to be effectively involved in the entire planning process, its formulation, implementation and resource mobilisation.

Excessive governmental control is also responsible for the failure of the local bodies. It is very often noticed that the government interferes in the day-to-day administration of the local bodies through the District Collector. The reports of the District Collector are given greater importance by the State government than even the collective voice of the local bodies. It is true that most of the popular representatives do not have a free mind and that their decisions may be biased by the consideration of party or other parochial interests. But this is also true of the leadership at the state and the national levels. In a parliamentary democracy, leaders of the majority party in the legislature form the government and it is not unoften that party views are imposed upon the people in the name of governmental decisions. Thus, there is no justification in ignoring the views expressed by the popular local bodies. But the governments at the state level are still working under the influence of an imperialistic and bureaucratic administration. They run to the District Collector instead of the Chairman of the Panchayat Samiti or the Zilla Parishad as if the Collector is more trustworthy than the popular representatives and is free from prejudices and party bias.

Most of the villagers are aware of the existence of Panchayats and the response of the villagers is quite favourable to Panchayats and their elected representatives. The people are closer to the Panchayat programmes than to the Community Development Programmes. The Panchayats and Panchayat

unions play an indispensable role in co-ordinating, directing and implementing the various rural development programmes initiated by the State Government and aided by organisation like the UNICEF. On the whole, the Panchayati Raj Institutions have been generally beneficial to the rural population.

However, casteism and communalism stand in the way of the proper operation of the Panchayat administration; the influence of these factors has been baneful to development. One important and serious aspect of the Panchayats is the interference of the political parties in their administration. If this can be contained, the Panchayats will be considerably benefitted. To avoid this evil, the political parties should be recognised at the Panchayat level, but at the same time, everything possible should be done to eliminate the evil consequences of the party politics in the administration of the Panchayat.

The powers now vested in the Panchayat are not commensurate with the duties and responsibilities assigned to them. As a result of this, many of the proposals, even on trivial matters, have to be sent to higher authorities for their approval. Lack of co-operation from some of the Government departments with which the Panchayats have to deal creates another difficult situation for the latter. In order to avoid these and other difficulties, the Panchayats should be given more powers—administrative and financial. Within the limited frame work, it may be said that the Panchayati Raj Institutions work satisfactorily.

QUESTIONS

(1) What are the needs and importance of local government?

(2) What are the functions of local government?

(3) What are the prerequisites for the success of local government?

(4) Trace the development of local government in India.

(5) Describe the form and functions of local government in the urban area.

(6) Write an essay on Panchayati Raj.

CHAPTER 8

CIVIL SERVICE AND BUREAUCRACY

The civil services are as essential as any other Organisation for a Government. It is immaterial whether the form of government is monarchical, dictatorial or democratic. The civil services constitute the backbone of a country's administration. The efficiency of the administration depends upon the character of the members of the civil service. That is, if the civil service personnel possess integrity, practical knowledge, sincerity and above all keep the interest of the governed, the administration is bound to be efficient and responsive. On the other hand, if they are dishonest, corrupt, insincere and indifferent, to that extent, that these evils are present in them, the administration will also suffer. This is more true in the case of democratic system of government than others.

In authoritarian and arbitrary forms of government the civil service is deliberately made bureaucratic. Its members are trained or expected to serve the individuals who possess the supreme power of the state and the privilege to govern the people. In this arrangement the civil service personnel cannot be expected to reflect the public opinion and act accordingly. Naturally, they tend to suppress the political consciousness and the rights of the people. Such civil service system was developed in the past before the dawn of democracy, in most of the countries of Europe and in particular the United Kingdom. What was the character of the civil service personnel in Britain was maintained in all of her fomer colonies including India, Pakistan, Australia and Canada only to mention a few examples.

MEANING OF CIVIL SERVICE

The civil service refers to the structure and functions of the services in any country. In its narrow sense it refers to the various structures of the administration from the top to the bottom in a hierarchical basis. In its wider sense, it refers not

only to the structures of the administration but also to the individuals who are part and parcel of the administration. Thus the civil service has come to denote the structural frame of the administration besides the men who man that frame. For details of the history of the origin of civil service in general in the West and its characteristic features, reader may very well gather from such authorities who deal with those aspects. This chapter is devoted to furnishing information on the civil service with reference to the Indian context.

HISTORY OF CIVIL SERVICE IN INDIA

The origin and history of the civil services in India have to be found in the administration of the East India Company sometime in the 17th century. The East India Company and later on from 1858 the British Government through the Charter Act of 1793, Charter Act of 1833 and Indian Civil Service Act of 1861 gradually introduced the civil service system in this country with a view to make the administration of India easy for them. Since 1861 to 1950 several commissions were appointed, all of which in some way or other contributed to further strengthening the civil service and to make it broad based with opportunities for Indians to be associated with and serve in it. The pattern of civil service was introduced in this country and it continued to hold good and serve Inaia with marginal improvements after Independence. Even the constitution of India which came into force in 1950 did not radically alter the basis, the structure and functions of the civil service. Therefore, it may be observed that the Indian Civil Service even now is, what it was during the time of the British rule without substantial changes.

THE CIVIL SERVICE SINCE INDEPENDENCE

There has been a steep rise in the powers, functions and prestige of the civil servants in India since Independence. The reason is that India has introduced the system of planning with a view to establishing a socialistic pattern of society which means an increase in the volume and inability of work. The members of the civil service in India are no longer considered the masters who are responsible for the maintenance of law

and order problem of the administration but treated as servants of the people.

CIVIL SERVICES UNDER THE CONSTITUTION

The civil services under the Republican Constitution of India can be divided into two categories, namely, "The Union Services", and the 'State Services'. Besides these two categories the constitution also specifically provides for the 'All India Services'. The Indian Administrative service and the Indian Police Service have been specified as All India Services. The officers belonging to these services are not under the exclusive control of either the Central or the State Governments. Their recruitment and determination of service conditions are dealt with by the Central Government irrespective of the fact where they happen to serve at a given time or the other. The Union Services are required to deal with the administration of Union Subjects, such as Defence, Foreign Affairs, Railways, Posts and Telegraphs, Customs and Income-tax. The State Services are required to deal with subjects like Land Revenue, Agriculture, Health, Forest, etc. The officers of the Union Service including All India Service and State services are recruited by the Union Public Service Commission and the concerned State Public Service Commission respectively.

The expression "All India Service" is a technical one, used by the constitution to indicate only the Indian Administrative Service and the Indian Police Service and such other services which may be included in this category in the manner provided by Article 312 of the Constitution. The 'Union Services' or 'Central Service' is an expression which refers to certain services under the Union, maintained on All India basis, for service thoughout the country—for instance, the Indian Foreign Service, the Indian Audit and Accounts Service, the Indian Customs and the Excise Service and the like. The Article 312 provides that if the Council of States (Rajya Sabha) declares by a resolution supported by not less than two-thirds of the members present and voting, that it is necessary and expedient in the national interest to create an All India Service, common to the Union and the States, Parliament may provide for its

creation by making a law. The practical incident of an All India Service thus is that the recruitment to it and the conditions of service under it can be regulated only by an Act of the Union Praliament. It must be noted that it is by virtue of this power that Parliament has made the All India Service Act, 1951 and that the conditions of service. recruitment, conduct, discipline and appeal of the members of the All India Services are now regulated by rules made under this Act. Since these Rules provide that the officers of the All India Services shall be appointed and controlled by the Union Government, these services constitute an additional agency of control of the Union over the states in so far as members of these services are posted in the key posts in the States.

FEATURES OF ALL INDIA SERVICES

The All India Services possess certain distinct features, which may by stated as under :—

1. The Indian Administrative Service are mostly based on British system. They resemble the old Indian Civil Services to a great extent. However, a change has occurred in the trend and behaviour of I. A. S. officers after independence. They do not consider themselves as 'public masters' but as 'public servants'. This change has come about primarily due to the reason that the Indian public is becoming conscious of their rights.

2. The services consist of the best talents of the country. The officers of All India Services are recruited on the basis of a competitive examination, followed by a Personality Test. In this process, the undeserving candidates do not have much chance to come to the fore. However, to make the civil services truly representative, provisions exist for promotion of junior civil servants to I. A. S., and a certain quota has been reserved for scheduled caste and scheduled tribe candidates. This has been done to make the services fully representative.

3. It is a multi-purpose service composed of 'generalist administrators' who are expected to hold posts involving wide variety of duties. The administrators are imparted general

training and fitted to hold charge of different branches of administration. The I.A.S. officers are not specialists in the narrow sense, but they may be called upon to do executive, judicial, revenue, or developmental duties.

4. The All India Services are organised in the form of a number of I. A. S. cadres for each State. The strength of each cadre is so fixed that some reserve is left at the disposal of the Union Government. Some of the I.A.S. officers from the States come on deputation (on tenure basis). The idea is to give to each I.A.S. and I.P.S. officer the chance to come to the Union. So there is two-way traffic between Union and States. The arrangement has three advantages. Firstly, it places at the disposal of the Union Government, the services of officers with first hand knowledge and experience of conditions in the States. Secondly the State Governments get officers (after their return to State Cadre) who are fully familiar with the policies and programmes of the Union government. Thirdly, it helps in the achievement of emotional integration and avoids narrow State loyalties.

5. The I. A. S. Officers enjoy good salary and status in society. This is necessary to attract the best available talents in the country and to enable the selected candidates to serve away from their home states without any financial strain. This is also essential to ensure their impartiality.

FUNCTIONS OF CIVIL SERVICES

The concept of Welfare State has changed the complexion of modern states including India. They are no longer meant merely to protect the people and restrain undesirable elements. The State now is regarded as a guardian of the people in all walks of life and therefore it has to take steps and foster the welfare of its citizens. The activities of the Government have accordingly multiplied. In this task the civil services have to play a vital role.

The functions of the civil services are varied and numerous. However, the civil services are usually expected only to implement the policy formulated by the polltical executive. Actually, they play a significant part in evolving the policies of the

government. However, it is the political executive which assumes responsibility for the formulation and implementation of policy. Hence, the important function of civil services is to run the administration according to the policies laid down by the political executive. Other functions of the civil services may be as given below:—

Advisory Functions

One of the primary functions of the civil service is to render advice to the political executives who are generally laymen and who do not in the absence of opportunities possess adequate information on aspects of administration. The senior officials feed the ministers and other executives with necessary information and statistics. The political executives depend on them for such information and assistance in order to formulate the policies or the programmes. Subject to the policies of the political executives, problems of administration are tackled by the civil servants themselves.

Poogramme Planning

In modern democracies planning is a vital aspect of administration. The success or failure of any government depends upon the nature of its plan and programmes. As the political executives do not have the necessary expertise they seek the help of the members of the civil services for guidance and information. In this field also, the civil service personnel render useful assistance to them.

Delegated Legislation

Owing to the growing complexity of modern legislation, the legistature now seldom goes in deatils of the measures passed by it. It usually passes bills in skeleton form, and leaves it to the executive to fill up the blanks. Thus, the executive has to make rules and take other steps to implement the policy approved by the legislature in a general form. Making of necessary rules and implementation of policy is actually done by the civil services, under the over-all supervision of the political executive.

Improving Efficiency and Output of Work

The administrative machinery seeks to speed up work so that the masses may enjoy all facilities necessary for good life. Every official has to maintain certain work standards in order to be able to asses. whether his organization is reasonably effective and whether the levels of efficiency and output are rising or not.

Elimination of Waste and Quick Despatch

An important function of the civil services is to effect improvements in the working methods by eliminating waste of time, money and energy and securing eflcctive utilisation of available resources. Active assistance of units, specialized in 'Organization and Methods' work may be secured for this purpose. The O & M units which have been set up in the United Kingdom, the United States of America and India have helped in reducing and in effecting the speedy disposal of matters.

Conclusion

A study of the varied functions of the civil services makes it clear that they have come to play a conspicuous role in the Modern States. They collect statistics, conducts research, advise the political executive and make strenuous efforts to fulfil the needs and satisfy the requirement of the people. With the growth in the activities of the state their role is also becoming vital. The extent of influence of the civil service on the ministers depends on three factors: (1) the personality of a minister, (2) the intelligance of civil servant, and (3) the use that the government makes of the civil servants.

In a socialist democracy, the role of civil servants in effecting progressive reforms in the country is likely to be decisive. In an infant democratic state like India, the civil services have to render active assistance to their amateur ministers, most of whom are inexperienced in the field of administration. India, which is keen to modernize and industrialise at a fast tempo needs not only a dynamic leadership but also a dedicated public

service. Only then will the civil service be able to win over the confidence and sympathy of the public.

BUREAUCRACY

The term Bureaucracy is derived from 'Bureau' which means an office or post. Thus, bureaucracy means a government of officials. Professor Laski says, "Bureaucracy is the term usually applied to a system of government, the control of which is so completely in the hands of the officials that their power jeopardises the liberties of the ordinary citizens." Bureaucracy is considered to be of modern origin. But it can be said that the bureaucratic system was there even in ancient times in countries like China, Rome, Egypt and India. However, Bureaucracy or the bureaucratic system came to be known intimately in modern times both in the West and ancient and African countries. It plays a crucial role in political systems or governments which are democratic in character.

FACTORS FOR THE RISE OF BUREAUCRACY

A number of factors have been responsible for the emergence of and continuation of bureaucracy. Among them in the first place the increase in the volume of work of the state is one. In order to attend to the increased work at a regular basis the need for the bureaucracy came to be realised. The second is that in any country more particularly in India there is a belief that civil service personnel alone possess intelligence and knowledge and as such they only could attend to the task of government and even the art of the government. Thirdly the bureaucrats possess necessary skill and experience in many aspects of administration which covers economic, political and social. They can tender advice to the political executive on these matters with confidence and certainty. Lastly, situations like war, national calamities, internal trouble lead to additional responsibilities. These require a regular unbroken and immediate attention of the administration. In this respect also any government worth the name and desirous of helping the people has to depend upon the bureaucrats. Thus the bureaucracy by its knowledge, experience, expertise and efficiency has come to occupy an important place in the administration.

POWERS AND FUNCTIONS OF BUREAUCRACY

It is very difficult to clearly and with any amount of certainty to give an account of the functions and powers of modern bureaucracy. They are varied in nature and numerous. Originally, the bureaucracy had to perform administrative functions. This was so before the emergence of the democratic system Even now, with the change in character of government with an emphasis on the service of the people, bureaucracy plays a vital role. Behind every decision of a political executive namely, a minister or the other there is the bureaucrat with his views, suggestions and even recommendations. It will not be certainly possible for political officers to arrive at suitable and useful decisions. Besides it is the members of the bureaucratic system who are entrusted with the administrative functions of any institution or agency and the government. This they do with utmost forethought, intelligence and efficiency. At the level of the government all permanent offices are filled with bureaucrats who are selecting for the purpose of performing the duties and responsibilities pertaining to those offices. From this it would be clear that how important is the need for and the service of bureaucrats.

Modern governments as every-body knows are democratic with reference to their constitution, aim and functions. Their role is to look after more than adequately the welfare of the citizens whose servants they are. The measures which the governments propose in this regard should have legislative sanction. For this purpose suitable legislation has to be obtained. Legislation is no doubt is a power which belongs to the legislatures. But the members of the legislature do not possess in every case adequate information and technical and legal knowledge. Therefore, modern legislatures depend upon the help of the bureaucrats who readily extend with such information and knowledge necessary for enacting legislative measures. This is an universal phenomenon. Even after the legislatures come out with suitable legislation it is incomplete. The bureaucrats are the persons who work out every minute detail with reference to such

legislation. Loopholes or defects if any are set right by the bureaucrats. Thus in the field of legislation also the role of the bureaucrats is great and inevitable.

Finance and apportionment of available finance and resources is yet another important aspect of administration. Here also, the governments have to depend upon the bureaucrats for assistance. Without their help this task cannot be carried out satisfactorily. Besides, the functions and powers mentioned above, the bureaucrats also assist the government and attend to functions like judicial and development.

CRITICISM AGAINST BUREAUCRACY

In modern times especially in developing countries there has been a criticism that the bureaucracy has not been functioning satisfactorily. It is said that the officers belonging to the bureaucratic system behaves like masters and not like the servants of people. They do create proplems for the administators as well as the people. Sometimes they even prevent the proper implementation of welfare programmes. Another charge is that the bureaucrats tend to be autocratic and ignore people who come into contact with them.

There is no doubt some substance in the charges levelled against the modern bureaucrats. But it cannot be said that the entire body of bureaucrats are bad and ignore the welfare aspect of the administration. Here and there may be a few individual officers who are indiffernt and unconcerned. On this score the bureaucracy as such cannot be criticised or condemned. Of late there seems to be improvement in the attitude and behaviour of the bureaucrats. This improvement is likely to improve further if the politicians and the people who are connected with them also give up their inferiority complex and free themselves from charges of nepotism, corruption, irregu larities and malpractices. If this happens even a bad set up is bound to improve and likely to deliver the goods. Thus one cannot squarely put the blame on the bureaucrats and try to escape.

CASE FOR A NEUTRAL CIVIL SERVICE

As has been observed above the civil service is the backbone of any administration. Without it or the bureaucrats who hold various offices the administration cannot be carried on. The concept of a neutral civil service is pregnant with meaning and it cannot be discussed at length in this chapter in all of its details. But this concept has its links with the attitude and behaviour of the civil servants. It means that of late the civil service has not been neutral and takes partisan attitude or sides to problems and issues with others. This is a phenomenon peculiar to democratic administration.

In democracies there are two sets of persons who possess and wield authority. They are the bureaucrats or civil servants and the political bosses. According to the modern belief the representatives of the people should have a definite voice in matters of administration. Naturally, the members of the civil service are inclined to the position of executing the instructions and orders of individuals who have the mandate of the people. In this connection it may be observed that the decisions, orders and policies of the politicians are likely to be biased. This will become still more acute when the representatives or the political bosses change as often as the changes take place in the complexion of the executive or the legislature as the case may be. This inevitably leads to the members of the civil service to give up their position of neutrality. Yet another reason for the lack of neutrality among the civil servants may be attributed to their desire to seek the favour of the political bosses and go higher up in the ladder of the civil service.

Whatever may be the reason for the non-observance of the principle of neutrality by the civil service it is an accepted fact that it is the duty of the civil service to remain anonymous and observe strict neutrality in administration and in its dealing with the political executives. It was remarked by somebody that the civil service should be like the steel frame. This means under no circumstance the civil service would compromise with the established practices and behaviour particular to itself.

The members of the civil service may no doubt stand to gain by serving their political matters temporarily. But in the long run and with changes taking place frequently, they may find it difficult to adjust themselves to the whims and fancies of the political heads. Moreover, the administration cannot have the luxury of uncertainty as to the fate of programmes which await implementation. It is an accepted fact that by and large there should be continuity in administration coupled with efficiency and sincerity. If this becomes the watchward of the civil service it will be good for the administration and the country. For these reasons, a neutral civil service is a must in any set up democratic or otherwise.

QUESTIONS

(1) What is civil service?

(2) Sketch the history of Indian civil service.

(3) What are the important features of All India services?

(4) Write an essay on the functions of civil service.

(5) What is meant by bureaucracy?

(6) How does bureaucracy grow? What are the effects of its growth?

(7) Briefly explain what is Neutral Civil Service?

CHAPTER 9

FUNDAMENTAL RIGHTS AND DUTIES

There are certain basic rights which are fundamental and essential for the living of man. A man without any freedom and completely dependent on superior authority is a slave. Such right are known as Fundamental Rights. In modern Constitution a separate chapter is incorporated as Fundamental Rights. It is also called sometimes as a Bill of Rights.

There are certain important reasons for the inclusion of Fundamental Rights as a part of the Constitution.

(1) A list of Fundamental Rights is a mechanism for safeguarding individual freedom. These freedoms are enshrined in the Constitution to give them sanctity and special force. They cannot be encroached upon or curtailed either by the legislature or the Executive. If they do, it is then the duty of the courts to intervene and protect these Fundamental Rights.

(2) A democratic government is a representative government. A representative government is a majority party government. It is possible for a party government controlling the machinery of the State, either as a result of political rivalry or passion to curtail the cherished rights of the citizens.

(3) Again Fundamental Rights is a shield of protection to the minorities. Hence, it is quite essential to have a list of Fundamental Rights as a part of the Constitution.

(4) A declaration of Fundamental Rights serves as an instrument of education.

(5) In modern times progressive totalitarian ideologies are placed before the people proposing to secure forcibly 'social

justice'. *In this process one destroyed* Rule of Law, *individual* freedom and initiative. To guard against the spread of such ideologies Fundamental Rights are incorporated as a part of the Constitution and enforced through the courts of law.

Nature of Rights in Modern *Constitution*

The individual is born and lives in some kind of society. The society guarantees the exercise of certain fundamental rights such as Right to equality, Right to freedom, Protection of life and personal liberty, Right to freedom of Religion and Right against exploitation, Right to property, Cultural and Educational Rights and finally Rights to Constitutional remedies. But these rights are not absolute. If an individual has absolute freedom, it hampers the freedom of others. Unrestrained, unregulated and unlimited fundamental rights would mean the law of the jungle. In modern states no individual has absolute rights. In the interests of the society and modern welfare state it is necessary to place certain reasonable restriction or limitations on the rights.

The individual and the State are both necessary for the smooth functioning of society, its growth and advance. If there is over emphasis on the rights of the individual it is likely to result in anarchy where all individuals suffer. If there is over emphasis on the powers of the State it destroys individuality.

Fundamental Duties

As a member of a society and State every individual fulfills certain fundamental duties and obligations. The duties are basic and essential for an orderly society. Duties are of two kinds: Moral duties and legal duties. It is the moral duty of every citizen to help the poor, the needy and the sick; to obey and respect the parents. Article 66 of Russian Constitution says (1977) that "Citizens of the USSR are obliged to concern themselves with the upbringing of children, to train them for socially useful work, and to raise them as worthy members of socialist society. Children are obliged to care for their parents and help them". It is a legal duty to pay taxes. Failure to perform legal duties is punishable.

Duties may further be divided into positive duties and negative duties. Paying taxes, casting one's vote at the time of elections and joining the army in times of National Emergency can be given as examples of positive duties. These may be described as list of do's; do pay taxes, do vote in the elections etc. The negative duties may be described as the list of don'ts: don't drink liquor, don't behave in a disorderly way, don't commit theft or murder etc.

Rights and Duties

Article 59 of Russian Constitution (1977) brings out very clearly the relationship between the rights and duties. It says that "citizens" exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Thus, every right has a corresponding duty. Duties and rights are the two sides of the same coin. Without duties there can be no rights. Under popular government the emphasis is on the duties of the citizens, and not merely on rights. The proper functioning of the State depends upon a well organised system of duties and rights.

Fundamental Rights in India

Part III of the Constitution of India deals with the fundamental rights. It contains an elaborate list of fundamental rights. They are the natural corollary of the preamble to the Constitution which says that India stands for Justice, liberty and fraternity. But they are not absolute. The Constitution itself provides reasonable restrictions on the rights. Some of the rights are of the nature of prohibitions and place Constitutional limitations on the authority of State. The fundamental rights are justiceable in a court of law. The Supreme Court and the High Courts are given the power to issue writs for enforcement of the rights. The right to move the Supreme Court for the enforcement of the rights, the right to Constitutional remedies, is itself guaranteed as a right. During National Emergency, the freedoms are automatically suspended. The President of India can issue an order suspending the right to move the Supreme Court for enforcement of the rights. The following are the important fundamental rights guaranteed in the Constitution.

Right to Equality: The Constitution prohibits discrimination against any citizen on grounds of religion, race, caste or place of birth. It ensures in public employment, equality of opportunities for all citizens. To this, there are certain exceptions. The State can reserve certain percentage of jobs for the scheduled castes and tribes and backward classes in recruitment to pubic services and also in making promotions. Also, the State can prescribe in certain cases residential qualifications.

Right to Freedom: Article 19 of the Constitution guarantees seven freedoms:

(a) Freedom of Speech and Expression.

(b) Freedom to assemble peacefully without arms.

(c) Freedom to form Associations or Unions.

(d) Freedom to move freely throughout the territory of India.

(e) Freedom to reside and settle in any part of the territory of India.

(f) Freedom to acquire, hold and dispose of property.

(g) Freedom to practice any profession or to carry on any occupation, trade or business.

Article 19 itself imposes certain reasonable restrictions on the exercise and enjoyment of the seven freedoms.

Protection of Life and Personal Liberty: Personal liberty and the rule of law find a place in the Indian Constitution. Article 21 guarantees that no person shall be determined of his life or personal liberty except according to procedure established by law.

No person can be convicted of any offence except for the violation of a law. No person can be given a penalty greater

than what might have been inflicted under the law. No person will be prosecuted and punished twice for the same offence. No person accused of any offence will be compelled to be a witness against himself.

Right against Exploitation : Article 23 prohibits traffic in human beings, enforced labour, and employment of children below fourteen years, in factories, mines and other dangerous employment.

Right to Freedom of Religion : India's Constitution guarantees religious freedom to all. Subject to certain reasonable restrictions like public order, morality, health etc. all persons are entitled to freedom of conscience and the right to profess practice and propagate religion. The Constitution debars religious instruction in all educational institutions wholly maintained by the State.

Cultural and educational Rights : The Constitution safeguards the freedom of every minority to practice its own religion and conserve its own culture, language and script. All minorities, religions or linguistic have been given the right to establish and administer educational institution and no discrimination can be shown in granting aid to them.

Right to Property : Article 31 guarantees the right to earn and enjoy private property. The property of a person can be taken over by the government for a public purpose, and under the authority of law, which provides for compensation for the property rights in the Indian Constitution.

Right to Constitutional Remedies : According to Article 32, every citizen has the right to move the Supreme Court for the enforcement of fundamental rights. The Supreme Court has the power to issue writs in the nature of hebeus corpus, mandamus, prohibition, quowanants and certiorari for the enforcement of the rights. Rights have no meaning unless they are safeguarded and enforced by the Courts. According to Dr. Ambedkar, Article 32 is "the heart and soul of the whole Constitution".

Rights and Parliament : According to 24th Amendment the Parliament is competent to alter, abridge or take away any of the fundamental rights by passing an amendment according to the procedure laid down in Article 368.

Fundamental Rights and Directive Principles

25th Amendment inserted a new Article 31 (c) in the Constitution. According to this Article the Parliament can pass laws implement the Directive Principles; such laws are placed outside the scope of judiciary and would not be affected by Article 14, 19 and 31. 42nd Amendment has made fundamental rights subordinate to the Directive principles. Thus the Directive principles are given precedence over the fundamental rights.

FUNDAMENTAL DUTIES

A list of fundamental duties is included in the Constitution of nearly 50 countries in the world. Constitutions of more than 30 countries have a single chapter on fundamental rights and duties ; whereas others have rights and duties under separate chapters.

The new Part IV imposes ten fundamental duties on the citizens of India. These duties were incorporated in the Constitution by the 42nd Amendment :

(1) to abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem.

(2) to cherish and follow the noble ideals which inspired our national struggle for freedom.

(3) to uphold and protect the sovereignty, unity and integrity of India.

(4) to defend the country and render national service when called upon to do so.

(5) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and renounce practices derogatory to the dignity of women.

(6) to value and preserve the rich heritage of our composite culture.

(7) to develop the scientific temper, humanism and the spirit of inquiry and reform.

(8) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

(9) to safeguard public property and to adjure violence.

(10) to strive towards excellence in all spheres of individual and collective activity, so that the Nation constantly rises to higher levels of endeavour and achievement.

The main objective of the fundamental duties in our Constitution is to change the attitude and thinking of the people and to bring about a peaceful social transformation in the country.

QUESTIONS

(1) What are the reasons for inclusion of Fundamental Rights in the Constitution ?

(2) What is the importance of Fundamental Duties ?

(3) Write an essay on the Fundamental Rights guaranteed in the Indian Constitution.

(4) What are the Fundamental Duties included in the Constitution ?

CHAPTER 10

ORGANISATION OF THE GOVERNMENT OF INDIA AND TAMIL NADU

The Constitution of India which came into effect on 26th January 1950 provided a parliamentary system of government both in Centre as well as in Tamil Nadu. In this system of government the President in the Centre and Governor in Tamil Nadu have nominal powers whereas the real executive powers are in the Council of Ministers headed by a Prime Minister at the Centre and Chief Minister in Tamil Nadu. For their actions the Central Council of Ministers is responsible to the Lok Sabha and the State Council of Ministers to the Legislative Assembly. The System of Government followed is based on the British model with suitable modifications made so that it may be appropriate for a federal form of government.

INDIA

PRESIDENT OF INDIA

As per Article 52(1) the executive power of the Union is vested in the President of India. But the President has to act in accordance with the advice rendered by the Council of Ministers headed by a Prime Minister. He is also the Chief of the Defence Forces. He is elected by the members of an electoral college consisting of the elected members of both Houses of Parliament and elected members of the Legislative Assemblies of the States. He holds office for a term of five years. He can be removed from office by impeachment by Parliament for violating the Constitution.

The Vice-President of India is the Chairman of the Council of States. He is to act as President or to discharge his functions during casual vacancies in the office of the President or during the absence of President. The Vice-President is elected by the

members of an electoral college consisting of the members of both Houses of Parliament for a term of five years. Both the President and Vice-President are eligible for re-election.

The President has the power to grant pardons, etc. and to suspend, remit or commute sentences in certain cases.

Executive Powers

The Supreme executive authority is in the hands of the President. The administration of the Union Government is conducted in the name of the President. All important decisions, made by the Prime Minister should be brought to the knowledge of the President. If the President considers a decision made by a Minister to be of importance then he can ask the Prime Minister to submit such a decision for the consideration of the entire cabinet. The Prime Minister is appointed by the President and on the advice of the Prime Minister other ministers of the Union are appointed by the president. The President appoints the Attorney-General of India, Comptroller and Auditor-General of India, Chairman and member of the Union Public Service Commission, Chief Justice and Judges of the Supreme Court and High Courts, Governors, Ambassadors and Envoys etc. He has the power to appoint the members of the Election Commission, Official Language Commission, Inter-State Council, Finance Commission Commissions of Enquiry etc. He can dismiss a member of the Union Public Service Commission after getting an enquiry report from a judge of the Supreme Court. He can also dismiss a judge of the Supreme Court or of a High Court after a special address to that effect is passed by the Parliament. He can also dismiss the Prime Minister.

The President is also the administrator of all the Union Territories. He appoints his Ambassadors and Envoys to foreign States. He appoints the Chief of the Air Force, Navy and of the Army.

Legislative Powers

He summons the sessions of Parliament and he also prorogues the sessions of Parliament. He has the power to dissolve the Lok Sabha. When the Lok Sabha and the Rajya Sabha do not agree regarding a Non-money Bill the President can summon a joint session of both the Houses of Parliament. He can nominate 12 members to the Upper House of the Union and he has the power to nominate two persons from the Anglo-Indian community to the Lok Sabha, if this community does not have adequate representation in that House.

The president can address and send messages to Parliament. The President may send messages to either House regarding a Bill then pending in the House. In case of a Non-Money Bill, the President may sign it or send it back to the House for its reconsideration with his recommendations. If the Bill is re-passed with or without his recommendations then the President cannot refuse to sign the Bill to. He has no veto power regarding Money-Bills. A Money Bill can only be introduced on the recommendation of the President. Also any Bill which seeks to alter the boundary lines of a State can only be introduced with the prior recommendation of the President.

The President is given the power to promulgate Ordinances which have the force of law. He can withdraw the Ordinance at any time or the Ordinance will have no effect six weeks after Parliament reassembles. But the Parliament can approve the Ordinance made in the form of a Bill. If the Parliament rejects the Ordinance then it will have no effect.

The President possesses absolute veto power regarding Bills passed by the State Legislatures. "In cases of Bills dealing with compulsory acquisition of private property, or being derogatory to the powers of the High Court, or seeking imposition of a tax on a commodity declared essential by Parliament, or likely to be in conflict with the Union legislation already in force, or with any other matter so considered essential by the Governor of a State, the Governor shall

reserve such a bill for the consideration of the President who may give his assent, or withhold it, with or without assigning any reason, or may return it to the State".[1]

Emergency Powers

Articles 352 gives the President power to declare National Emergency whenever he is satisfied that a serious situation has arisen, or is most likely to arise, threatening the security of India an account of internal disturbances or war. The satisfaction of the President in this matter can not be questioned in a Court of Law. Such a proclamation should be laid before Parliament and if not approved by it at the most within 2 months, it will have no effect.

When such an emergency is declared, it will have the following effects. The Parliament of India can make laws regarding any matters provided in the State List. If Parliament is not in session the President can promulgate ordinances regarding subjects mentioned in the State List. The Centre can issue directions or instructions to any State regarding the way in which the executive power of the State is to be exercised. The revenues of the States may be used by the Government of India. The Fundamental Rights of the citizens of India remain suspended.

The President can also declare an Emergency in a State as per Article 356. On the report of the Governor of a State or otherwise the President can take over the administration of a State to himself and empower Parliament to make laws for the State, if he is satisfied that the Constitutional machinery of a State can not be carried on in accordance with the Constitution of India.

The President can declare a Financial Emergency if he is satisfied that a situation has arisen whereby the financial stability or the credit of India or any part thereof is threatened. Such an Emergency will have the following effects. The Union can give dirctions to the State to observe such

[1] J. C. Johari : Indian Government and Politics, p. 354

canons of financial propriety as may be specified in the directions. The salaries and allowances of all or any class of persons serving in the State Government or Central Government may be reduced during the time of emergency.

In all matters including the exercise of the executive powers, the President generally should act as per the advice rendered by the Council of Ministers headed by the Prime Minister. But it will be a healthy convention in a Federal State like India if the President acts independently (1) in declaring an Emergency in a State because of the break down of the Constitutional machinery; (2) in dissolving the Lok Sabha, (3) in dismissing and appointing the Prime Minister of India.

PRIME MINISTER

Article 75 (1) provides that the Prime Minister shall be appointed by the President, and other Ministers shall be appointed by the President on the advice of the Prime Minister. Clause (2) of the same Article lays down that Ministers shall hold office during the pleasure of the President. Since clause (3) of Article 75 states that the Council of Ministers shall be collectively responsible to Lok Sabha and Article 74 provides that the President in exercising his functions, act in accordance with the advice given by the Council of Ministers headed by the Prime Minister, the real executive power of the Union Government is vested in the Prime Minister and the Council of Ministers, and not in the President. Let us first discuss the manner in which the Prime Minister exercises these powers.

The President must appoint as Prime Minister a person who had been elected as the leader by the majority party in the Lok Sabha, or in case no party commands a majority, a person who has been elected leader by coalition of parties. Only when a political party (or parties) in Lok Sabha fails to elect a leader unanimously, the President can exercise his discretion in this matter. Similarly, in forming the Council of Ministers, although it is the prerogative of the Prime Minister to select its members, he must include all the important leaders of the party (or parties) that has elected him the leader, must satisfy all State and Union Territories by giving them representation in

the Ministry and must give representation to all shades of opinion and interests in the party. The Scheduled Castes and Backward Communities must also be provided representation. In order to enable the Prime Minister to do all this, Article 75 Paragraph 5 provides that he may include in the Council of Ministers a person who is not a member of Parliament, provided that such a person will cease to be a Minister at the expiration of six consecutive months unless he gets elected during that period to either House of Parliament. A Minister who loses the confidence of the Prime Minister or who disagrees with his policies has to leave his office.

It is the Prime Minister's prerogative to constitute the Ministry and to allocate portfolios among the Ministers. This is a power which the Prime Minister exercises by and large, in his discretion. The Prime Minister not only constitutes the Ministry and distributes portfolios among the Ministers, but he also sees to it that all Ministers function in close co-operation with each other, and that all decisions of the Cabinet are implemented in the country. The latter function is performed through the Cabinet Secretariat that is under his direct control and supervision.

The Prime Minister is the link between the President and the Council of Ministers. The duties of the Prime Minister as defind in article 78 are: (a) to communicate to the President all decisions of the Council of Ministers; (b) to furnish information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision had been taken by a Minister but which had not been considered by the Council.

Whether or not the Prime Minister holds the Foreign affairs portfolio, he is the chief promoter of India's interests in the world affairs. He attends international conferences of crucial importance personally, always takes part in the Commonwealth Prime Ministers' Conferences, enters into correspondence with foreign heads of Governments on issues concerning

world peace and security, pays official visits to foreign countries to discuss matters of mutual interest, receives foreign heads of Governments and States and international agencies like the United Nations, sends messages of good will and felicitations on National days and inauguration of new regimes or administrations, makes statements of India's policy if and when there are significant developments on the stage of world politics, and on occasions sends his personal emissaries to conduct secret and crucial negotiations with friendly countries.

An Appraisal

The office of the Prime Minister first originated in England and was borrowed by the Constitution-makers elsewhere. The Prime Minister is described as the 'Key stone of the Cabinet Arch' and first among equals. Others indicated that the Prime Minister was in fact both 'captain and man' at the helm. Professer Harold J. Laski called him, "The pivot of the whole system of Government". Ivor Jennings described him as 'The sun around which the planets revolve'. There is no doubt that the office of the Prime Minister is the most powerful in a Parliamentary system of Government. Political commentators have begun to say that India has neither a Parliamentary form of Government nor a Cabinet form of Government but a Prime Minister form of Government.

COUNCIL OF MINISTERS

The Constitution provides for a Council of Ministers to aid and advise the President in the exercise of his functions. The Supreme Court has ruled that in general the President has to act as per the advice given by the Council of Ministers. The Council of Ministers consists of the Prime Minister and other Ministers and all Ministers are not identical in rank. They are classified into (a) Cabinet Ministers, (b) Ministers of State and (c) Deputy Ministers. The Cabinet Ministers are in charge of important portfolios and form the inner circle of the Council of Ministers. They attend the meetings of the Cabinet and take the major policy decisions. The Ministers of State are slightly lower in rank and attend the meetings of the Cabinet when invited. The Deputy Ministers assist the Minister in charge of a Deparmtent as they

do not hold independent charge of a Department. Though the Parliamentary Secretaries do not exercise the powers of a Minister they are also included in the Council of Ministers. Normally they assist the ministers in the discharge of their parliamentary duties and answer questions on their behalf.

Features of Cabinet System

The Cabinet system works in India on certain well-recognised principles. These are as follows :

1. **Constitutional Executive Head** : The President is a nominal executive head. The real power is exercised by the popularly elected Ministers. The President is not associated with the Cabinet. However, Constitution imposes on the Prime Minister the duty to communicate all the decisions of the Council of Ministers to the President. Thus we see that the decisions are taken by the Council of Ministers, but are communicated to the President. The Council of Ministers is responsible for its decisions to the Lok sabha.

2. **Leadership of the Prime Minister** : The Prime Minister is the leader of the Cabinet. Other Ministers are appointed by the President on the recommedations of the Prime Minister. He distributes portfolios among them. He presides over the meetings of the Cabinet and decides what business is to be transacted. He can ask any Minister to resign. If the Minister concerned refuses to resign, the Prime Minister can either reshuffle his Cabinet and exclude him or can advise the President to dismiss him. With the resignation of the Prime Minister, the whole Cabinet goes out of office.

3. **Political Homogeneity**: The Ministers belong to the same political party and hold similar views on public matters. The Ministers may hold divergent opinions in the Cabinet Meetings, but these differences are not exposed. Once a decision is arrived at, all of them must stick to it. However, if a Minister does not agree with the policy of the Cabinet, he can resign his office.

4. **Close Relationship between Legislature and Executive**: The Cabinet emerges out of Parliament. The Ministers must be the Members of Parliament. If a person, who is not a Member of Parliament, is appointed as Minister, he must find a seat in either House of Parliament within six months. This binds the Executive and the Legislature and ensures a harmonious and stable government. The Ministers attend the meetings of Parliament, move and pilot important Bills, participate in debates, answer questions and defend their policies.

5. **Ministerial Responsibility**: Ministerial responsibility implies two things:

(i) Each Minister is individually responsible for the administration of his respective Department.

(ii) Each Minister is collectively responsible for the administration of the Governmental machinery as a whole.

It must be noted that the collective responsibility of the Cabinet impiles that the defeat of a Minister on any issue shall mean defeat of the Ministry as a whole. The Cabinet is a team and its members sink or swim together. The collective responsiplity also implies that the Ministers are not allowed to speak or vote against the decisions of the Cabinet. It, however, does not mean that the Cabinet shall accept responsibility for any mal-administration or corrupt practice of any particular Minister. For such faults, the Ministers are individually responsible.

6. **Secrecy**: It is very essential that the Cabinet should deliberate in secrecy. If the meetings are held in open, the Ministers will not be able to express their views freely due to fear of adverse publicity. Thus harmonious working of the Government shall be rendered impossible.

PARLIAMENT OF INDIA

The Parliament of India consists of the President of India, and the two Houses known as the Rajya Sabha and the Lok Sabha.

Rajya Sabha

It consists of a maximum of 250 members; 238 are elected and the remainig are nominated. It is a permanent House. It cannot be dissolved. Its members are elected for a period of 6 years, one third of the members retire in every 2 years. The members of the House are elected by the elected members of the State Legislative Assemblies. All Bills, other than Money Bills, can originate in the Rajya Sabha. No Non-money Bill becomes a law unless it is passed by the Rajya Sabha. Deadlocks between the Rajya Sabha and Lok Sabha can be resolved only through a joint session of both the houses. Money Bills can be delayed by the Rajya Sabha only for 14 days. The Lok Sabha can reject the recommendations made on the Money Bills by the Rajya Sabha. But regarding Constitutional Amendment Bills the Rajya Sabha has to approve them separately. Rajya Sabha can pass a resolution to impeach the President of India. It can sit as a Tribunal for impeaching the President of India if the Lok Sabha passes a resolution to impeach him. Such a resolution is to be passed by a two thirds majority of the total membership of either House. A Judge of the Supreme Court and High Court can be removed only after resolution to that effect is passed by both the Houses. The Parliament can make law regarding subjects in the State List, if the Rajya Sabha passes a resolution to that effect. But such a resolution is valid for a period of one year only. In the absence of the Lok Sabha, the approval of Rajya Sabha is necessary for extending the proclamation of Emergency for a period more than 2 months. As per Article 82, the Vice-President of India is the ex-officio Chairman of the Rajya Sabha.

Lok Sabha

It consists of a maximum of 545 members and 2 members of the Anglo-Indian community are nominated by the President if that community does not get adequate representation. The remaining members are elected. A Member of the House of People must be a Citizen of India. He must have also completed 25 years of age. He must possess such other qualifications as may be prescribed by Parliament. The normal life of the Lok Sabha is five years and can be dissolved earlier by the President,

Under a proclamation of Emergency, the President can extend its life for a year at a time. Normally the Lok Sabha holds three sessions in a year. The Speaker who presides over the Lok Sabha is elected by the House among its own members. 12 Committees of the Lok Sabha carry most of the routine business of the House. The main business of the House is to pass Bills. A Money Bill can only originate in the Lok Sabha and all other Bills are also to be passed by it to become a law. The Lok Sabha exercises control over the de facto executive, that is, the Council of Ministers as they are collectively responsible to this House. If the House passes a "No Confidence Motion" against the Cabinet, then the latter has to resign. If an important Government Bill or a Budget is rejected then also the Cabinet has to tender its resignation. The Lok Sabha exercises its control over the Cabinet in the following ways also: introduce call-attention motions, table adjournment motions, demand half-hour discussions and ask questions. As we have pointed out earlier it has also authority on issues regarding the election and removal of the President of India. It has equal powers with that of Rajya Sabha in the removal of the Judges of Supreme Court and High Courts, Chairman and Members of the Union Public Service Commission, Attorney General and Comptroller and Audit General. In amending the Constitution, it has the same powers as that of the Rajya Sabha.

Powers of Parliament

The powers of the Indian Parliament are vast and extensive. As per Article 2, the Parliament can by law admit any territory into the Union, or establish new States. Article 3 provides that it can : (1) form a new State by separation of territory from any State or by unifying two or more States or parts of States or by unifying any territory to a part of any State; (2) increase or diminish the area of a State; (3) alter the boundaries of any State and (4) alter the name of a State.

Under Article 11, Parliament could make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship. Under Article

16 (3), Parliament can prescribe requirements regarding residence for employment under the Government of, or any local or other authority within, a State or Union territory. Under Article 35, Parliament can make laws to give effect to provisions regarding Fundamental Rights. Under Article 83 (2), Parliament can extend its own duration during a period of a proclamation of Emergency, but this can not be done for a period of more than one year at a time and not exceeding in any case beyond a period of six months after the proclamation has ceased to operate. Parliament has powers to regulate the recruitment and conditions of service of persons appointed to the secretarial staff of either House.

Article 169 (1) empowers Parliament to abolish the Legislative Council of a State having such a Council or to create such a Council in a State not having it, provided the Legislative Assembly of the State passed a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting. It also enjoys the power of establishing any additional courts for the better administration of laws made by it. The residuary power of legislation is vested in Parliament, that is, it could legislate on any subject not enumerated in the Concurrent Legislative List or State List. If the Rajya Sabha declares, by resolution supported by not less than two-thirds of the members present and voting, that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in State Legislative List specified in Resolution, it is lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remained in force (Article 249). While a Proclamation of Emergency is in operation, Parliament enjoys power to legislate with respect to any matter in the State Legislative list for the whole or any part of the territory of India.

Estimates relating to expenditure, other than the expenditure charged on the Consolidated Fund of India, are submitted to Parliament in the form of demands for grants, and

Parliament has the power to assent, or refuse to assent or to reduce the demands. As laid in Article 75 (3) of the Constitution, the Council of Ministers are collectively responible to the Lok Sabha.

SUPREME COURT

Though India is a Federal State, it has an integrated judiciary with the Supreme Court at the top and the High Courts just below it. The Supreme Court has original and exclusive jurisdiction in disputes between two or more States.[1] It has Appellate Jurisdiction in any case, civil or criminal, that involves, by its own certification, a substantial question of law in the meaning and intent of the Constitution. The Supreme Court (as well as the High Courts) has the power to issue directions or orders in the nature of the writ of Habeas Corpus, Mandamus, Prohibition, Quo Warrento and Certiorari or any of them for the enforcement of Fundamental Rights. The issue of a writ is discretionary.

As regards Constitutional cases, an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceedings of a High Court, if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. When a High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal from such judgement. decree or final order, if it is satisfied that the case involves a substantial question of law as to the interpretation of the Constitution.

In civil cases, an appeal shall lie to the Supreme Court from any judgement, decree, or final order in a civil proceedings of a High Court, if the High Court certifies that the amount or value of the subject-matter of the dispute is not less than Rs. 20,000/- or such other sum as may be specified by Parliament or that the case is fit for appeal to the Supreme Court. Where the judgement, decree or final order appealed affirms the decision of the

[1] Robert L. Hardgrave Jr.: India-Government and politics in a Developing Nation. p. 75.

Court immediately below, the High Court must also certify that the appeal involves some substantial question of law. It is only then that an appeal is allowed. Moreover, no appeal shall lie to the Supreme Court from the judgement, decree or final order of one judge of a High Court.

In criminal cases, an appeal will lie to the Supreme Court from any judgements, final order or sentence in a criminal proceedings of a High Court, if the High Court has, on appeal, reversed an order of acquittal of an accused person and sentenced him to death; or has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death, or certifies that the case is fit for appeal to the Supreme Court. Parliament may confer on the Supreme Court any further powers to entertain and hear appeals subject to such conditions and limitations as may be specified in such law.[1]

Article 143 provides that if at any time it appears to the President of India that a question of law or fact has arisen, or is likely to arise which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration, and the Court may after such hearing as it thinks fit, report to the President its opinion.

Arlicle 136 provides that the Supreme Court may, in its discretion, grant special leave to appeal from any judgement, decree, determination, sentence or order in any case or matter passed or made by any court or tribunal in India.

The Supreme Court also can review any judgement pronounced or order made by it. The law declared by the Supreme Court will be binding on all Courts within India. The Supreme Court shall have all and every power, subject to any provision of law made by Parliament, to make any order for the purpose of securing the attendence of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself. All authorities, civil and

[1] V. D. Mahajan : Select Modern Governments, p. 199.

judicial, in the territory of India shall act in aid of the Supreme Court. According to Article 142, the Supreme Court may pass such degree or order as is necessary for doing complete justice in any case or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India. No judgement shall be delivered by the Supreme Court save in Open Court.

The Supreme Court is the final interpreter of the Constitution of India. The Supreme Court can declare as to whether a particular law is ultra vires and intra vires to the Constitution.

Every effort has been made to make the Supreme Court as independent as possible. The judges hold their office during good behaviour and not during the pleasure of the executive. The salaries of the judges cannot be reduced during the term of their office. The same applies to their allowances and other privileges. Their salaries are not votable.

TAMIL NADU

The organisation of the Government of Tamil Nadu is almost the same as that of other States of the Indian Union.

GOVERNOR

The Governor is the de jure executive of Tamil Nadu. He also acts as a link between the Centre and the State Government. The President of India appoints the Governor for a term of 5 years and he holds his office during the pleasure of the President. Thus, he may be transferred from one State to another and he can be re-appointed in Tamil Nadu again. By convention, he must not generally belong to the State where he is appointed. The second covention is that the Union Government must take the Chief Minister of the State concerned in consultation before deciding about the nomination of a person for this post.

All formal executive authority of the State is in his hands. He appoints the Chief Minister of Tamil Nadu and on his advice, the other members of the Council of Ministers. He makes high

appointments like those of the Advocate General, Chairman and members of the State Public Service Commission etc. The President of India consults him when appointing the Judges of the High Court in Madras. He has the right to be kept informed and the Chief Minister is duly bound to inform matters relating to the administration of the State. He can ask for the submission of a decision made by an individual Minister to the consideration of the Cabinet. He is also the Chancellor of the Universities of Tamil Nadu.

He summons and prorogues the sessions of the State legislature. He can dissolve the Legislative Assembly. He may nominate some members of the Anglo-Indian community to the Legislative Assembly in case it does not have adequate representation in that House. He can address either House and may send messages for their consideration. He may give his assent to a Bill or withhold it, or return a Bill (a Non-money Bill) to the legislature for reconsideration. The Governor has to give his assent in case a Non-money Bill is passed again by the legislative with or without incorporating his recommendations. Bills dealing with the compulsory acquisition of private property, seeking imposition of Taxes on an item declared 'essential' by an act of the Parliament, or likely to be in conflict with some law of Parliament covering a matter in the Concurrent List, being derogatory to the powers of the High Court, of any other Bill likely to create conflict with the Union Government shall be reserved by the Governor of Tamil Nadu for the consideration of the President. He can also issue Ordinances which will be in operation at the most till six weeks after the reassembling of the State Legislature. He can withdraw it at any time. Money Bills must get his prior recommendation before they are introduced in the State legislature.

He can decide matters relating to the appointments, posting and promotions of district judges and other judicial officers. He has the power of granting pardon to persons convicted by the Courts of Law or remitting or commuting their sentence.

In all the above mentioned legislative, executive and judical powers of the Governor, he generally has to act as per the advice of the Council of Ministers of the State. But the Governor of Tamil Nadu has the following powers under which he can act in his own dicsretion: (1) He may send his report to the President about the breakdown of Constitutional Machinery in the State. (2) He may reserve a Bill for consideration of President when presented for his signature, if it, in his view conflicts with a law or policy of the Union Government. (3) He may dissolve the Legislative Assembly and (4) He may advise the President for the imposition of the President's rule in the State.

COUNCIL OF MINISTERS

Article 163 provides for a council of Ministers, with Chiet Minister at the head, to aid and advise the Governor. The Chief-Minister is the real working head of the Government of Tamil Nadu. He is the head of the Council of Ministers and presides over its meetings. Article 164 (1) indicates that the Chief Minister is appointed by the Governor. Normally the leader of the majority party in the Assembly is invited to be the Chief Minister.

Powers of the Chief Minister

He advises the Governor in matters relating to the selection of his Ministers, changes in their portfolios and their removal from office. He presides over the meetings of his Council of Ministers and sees to it that the principles of collective responsibility is maintained. Hence, he may advise a minister to tender his resignation, or he may advise the Governor to dismiss a Minister in case he differs from the policy of the Cabinet.

He communicates to the Governor all decisions of his Council of Ministers relating to the administration of the state of affairs and proposals of legislation. He also furnishes to the Governor such information relating to the administration of the state of affairs and proposals of legislation, as he may call for. He places a matter for the consideration of the Council of Ministers where the Governor requires him to have the decision of the Government.

He acts as the sole channel of communication between his ministers and the Governor. Likewise, the Chief Minister is the sole channel of communication between his ministers and the legislature. All Bills, resolutions etc. that are moved in the legislature must have his prior approval. He directs as to what his ministers must speak in the House to divulge the frontiers or the details of his official policy. When there is much criticism of his Government in the legislature, he himself holds the floor to face the Opposition and thereby tries to save his Government from being heckled or defeated.

He is the leader of the majority party and, as such, it is his duty to see that discipline is maintained. For this he appoints the Whips and sees to it that the orders of the Whips are invariably carried out. He may tender his resignation at any time or advise the Governor to dissolve the Assembly.

The Council of Ministers constitutes the real executive in the State. It is true that the whole administration is carried on in the name of the Governor, but the real executive authority is exercised by the Ministers themselves. Under ordinary circumstances, the Governor is to follow their advice.

Though, in theory, a Minister holds office during the pleasure of the Governor, yet in view of the collective responsibility of the Council of Ministers to the Lagislative Assembly, such an action may not be the case in actual practice.

The Constitution clearly ordains that the ministers are to be chosen from among the members of the legislature and they are responsible to it. This means that they can remain in office only if they enjoy the support of the majority in the State Legislative Assembly. They attend the meetings of the Assembly and take active part in its proceedings. They also move and pilot Government Bills.

The State Legislature controls the Council of Ministers in various ways.

(a) The House may force the Ministry to resign by passing a 'Vote of No Confidence' against one minister or the Ministry as a whole;

(b) If the Opposition passes a Bill in the face of strong opposition of the Government, the Ministry shall have to resign ;

(c) If a Bill introduced by the Ministry is thrown out by the Legislature, it tantamounts to 'No-Confidence Motion';

(d) During the debate on the Budget, the House may pass a token cut in the salary of a minister or the Ministry to show lack of confidence in the council of Ministers ;

(e) By putting questions, supplementary questions and moving adjournment motions, the House can bring to light and criticise the weakness of the Government.

LEGISLATIVE COUNCIL

Composition

The Seats of the Council are filled in the manner given below :

1. One-third of the members are elected by the legislative Assembly from amongst persons who are not members of the Legislative Assembly.

2. One-third of the members are elected by the members of the municipalities, district boards and other local authorities in the State.

3. One-twelfth are elected by registered teachers with three years' teaching experience in recognised schools not lower in standard than the secondary school.

4. One-twelfth are elected by the registered graduates of at least three years' standing.

5. The remaining one-sixth are nominated by the Governor from among persons having special knowledge of practical experience in respect of matters such as literature, science, art, co-operative movement and social service.

The elections to the Legislative Council are held in accordance with the system of proportional representation by means of a single transferable vote.

The Legislative Council is a permanent body and is not subject to dissolution. One-third of its members retire every second year, after completing the term of six years. The quorum for the conduct of business of the Legislative Council is one-tenth of its total strength or ten members, whichever is greater.

The Council elects its own Chairman and Deputy Chairman from amongst its members to preside over the meetings of the Council.

Legislative Powers of the Council

A Bill other than a Money Bill can originate in the Council and a Bill has to be passed by both the Houses. In case a Bill (other than a money Bill) after it has been passed by the Assembly and transmitted to the Council, the Council can accept it or pass with amendments or can delay it for a maximum of three months. If the Assembly passes it again with or without amendments suggested by the Council in the next session it is sent back to the Council again. If even in the second time, the Council passes it with amendments which are not agreeable to the Assembly or delays it for a period of more than a month, it will be deemed to have been passed by both the Houses and it will be sent to the Governor and upon his assent, it will become law. So, at the most, the Council can delay the Bill for four months. The Constitution is silent as to what will be the fate of a Bill originating in the Council, if it is rejected finally disagreed by the Legislative Assembly. It can however be presumed that such a Bill is to be deemed to be finally rejected.

Financial : If a Money Bill is sent to the Council after it has been passed by the Assembly, the Council must return it within 14 days. The Assembly may or may not accept its recommendations. If it rejects, the Bill is deemed to be passed by the Assembly. If the Council delays the Bill for more than 14 days, it is deemed to have been passed by both the Houses.

Executive : The Control over the executive is mostly placed in the hands of the Legislative Assembly and the Council has no major hand in it. But the Council can control the

executive, by asking questions and passing resolutions on matters of public importance.

LEGISLATIVE ASSEMBLY

The Legislative Assembly of the Tamil Nadu consists of a maximum of 234 members. The term of the Assembly is five years, unless dissolved earlier. Its life can be extended by Parliament by law for a period of not more than one year at a time if a Proclamation of Emergency is in operation. The extended period cannot continue beyond six months after the Proclamation has ceased to operate.

The qualifications laid down for a person seeking elections to the Legislative Assembly of the State are as follows :

(a) He should be a citizen of India.

(b) He should not be less than 25 years of age.

(c) He should possess such other qualifications as may be prescribed by the State Legislature. The Constitution forbids a person to be Member of both the Houses of the State Legislature.

The Assembly elects its own Speaker and Deputy Speaker at the first session of the new Assembly. The Speaker and the Deputy Speaker are elected by the members from amongst themselves. Both the speaker and the Deputy Speaker can be removed from office by a resolution of an absolute majority of the House; subject to the condition that at least fourteen days' notice has been given to the Speaker or the Deputy Speaker before moving such a resolution.

Powers of the Assembly

Legislative: The State Legislature has the exclusive power to make laws on all subjects contained in the State List of the Constitution of India. In addition to this, the State Legislature also makes laws on a subject in the Concurrent List of the VII Schedule of the Constitution.

A Bill, other than a Money Bill, can originate in either House of the State Legislature and is deemed to have been passed by the State Legislature, if it is agreed to by both the Houses. Unlike the Assembly, the Council cannot veto a Bill. It can at the most delay it for a maximum period of four months.

Financial : The control of the Legislative Assembly is complete over the finances of the State. A Money Bill cannot originate in the Council. It must originate only in the Assembly. The Council can at the most delay a Money Bill for fourteen days only and the Legislative Assembly has the complete control over the finance of the State.

Executive : The Council of Ministers of the State are collectively responsible to the Legislative Assembly. In other words, the Government can remain in office only so long as it enjoys the confidence of the Legislative Assembly. Thus, the Minister has to relinquish office if the Legistative Assembly expresses want of confidence in him. This can be done in many ways.

1. The House can reject a major Bill introduced by a Minister.
2. It can pass a token cut in the demands made by a Ministry.
3. The Assembly may pass a Private Member's Bil opposed by the Government.
4. It can pass a vote of No-Confidence against one minister or the Ministry as a whole.

HIGH COURT

The High Court of Tamil Nadu consists of a Chief Justice and some other judges as the President, from time to time, determines. A judge of the High Court is appointed by the President in consultation with the Chief Justice of India, the Chief

Justice of the Tamil Nadu High Court and the Governor of Tamil Nadu. The Judge of the High Court should have the following qualifications :

1. He should be a citizen of India ;

2. He should have held a judicial office in the territory of India at least for a period of 10 years; or

3. He should have been an advocate of a High Court or of two more such courts in succession at least for 10 years.

A judge of the High Court retires at the age of 62 years. He may tender his resignation addressed to the President in writing. The President may remove a judge of a High Court in case each House of Parliament passes a special address by its special majority (absolute majority of the whole House and two-thirds majority of the members present and voting) charging the judge with proved misbehaviour or incapacity.

The High Court of Tamil Nadu has both Original and Appellate jurisdictions, in civil and in criminal cases and limited Original Jurisdiction in cases relating to admiralty, will, divorce, marriage and company laws and contempt of court. The High Court also has appellate Jurisdiction in civil and criminal cases. The Parliament has enlarged the jurisdictional competence of the High Court in two ways. First, the restriction that the original jurisdiction of a High Court shall not extend to matters of revenue or its collections has been done away with. Second, like the Supreme Court, the High Courts have been empowered to issue five kinds of prerogative rights not only for the protection of Fundamental Rights but for all other purposes also. Thus, the High Court can issue the writs of Habeas corpus, Mandamas, Prohibition, Quo warranto and Certiorari. The High Court has been given the power to settle disputes relating to the elections of Union and State Legislature. Besides, like the Supreme Court, the High Court is also a court of record. It has the power to punish for contempt of itself.

The High Court can call from their subordinate courts Returns, issue General Rules and Forms to regulate their Proceedings, prescribe for them Account Forms and Books, and settle Table of Fees allowed to the clerks or officers of such courts and to the pleaders practising therein. It has the power of superintendence and control over the lower courts within its areas except Military Courts. If the High Court is satisfied that a case pending before any of its subordinate courts involves a substantial question of the Constitutional Law it can take up the case and decide it itself or may send it back to the subordinate court after deciding the question of law involved therein. Finally, the High Court appoints its own administrative staff of officers and servants and frames rules for the determination of the privileges and conditions of their service.

QUESTIONS

(1) Write an essay on the powers of the President of India.

(2) Explain the role of the Prime Minister of India.

(3) Write briefly on the Council of Ministers

(4) What are the features and functions of Indian Parliament?

(5) Explain the importance of Supreme Court.

(6) What is the role of the Governor in the state ?

(7) How is the Council of Ministers constituted and what are its powers ?

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